

BRITISH AND AMERICAN JOINT COMMISSION

FOR THE SETTLEMENT OF THE CLAIMS

OF THE

HUDSON'S BAY & PUGET'S SOUND AGRICULTURAL COMPANIES.

MEMORIAL AND ARGUMENT

ON THE PART OF THE

HUDSON'S BAY COMPANY.

Montreal :

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BRITISH AND AMERICAN JOINT COMMISSION ON
THE HUDSON'S BAY AND PUGET SOUND AGRI-
CULTURAL COMPANIES' CLAIMS.

In the matter of the Claim of the HUDSON'S BAY COMPANY.

TO THE HONORABLE THE COMMISSIONERS :

THE GOVERNOR AND COMPANY of Adventurers of England trading into Hudson's Bay, commonly called THE HUDSON'S BAY COMPANY, Claimants, submit the following Memorial and statement of their claims upon the United States ; and for facts and considerations in support of such claims, respectfully declare :—

That, in the year 1846, and for a great number of years previous thereto, the Hudson's Bay Company were in the free and full enjoyment, for their own exclusive use and benefit, of certain rights, possessions and property of great value, within and upon the Territory on the North-west Coast of America, lying Westward of the Rocky Mountains, and South of the 49th parallel of North latitude ; such rights consisting as well in extensive and valuable tracts of land, whereupon numerous costly buildings and enclosures had been erected and other improvements had been made, and then subsisted, as of a right of trade which was virtually exclusive, and the right of the free and open navigation of the River Columbia within the said Territory.

That the rights, possessions and property thus held and enjoyed by the Hudson's Bay Company, had been acquired while the said Territory was in the ostensible possession, and under the Sovereignty and Government of the Crown of Great Britain, and the Company held and enjoyed the same, with the knowledge and consent, and under recognitions, both express and implied, of the Crown of Great Britain, and by persons acting under its authority.

That, by the Treaty concluded between Great Britain and the United States of America, on the 15th day of June, 1846, while the Hudson's Bay Company were in the full and free possession and enjoyment of their said rights, it was in effect declared to be desirable for the future welfare of both Countries, that the state of

doubt and uncertainty, which had theretofore prevailed, respecting the Sovereignty and Government of the Territory on the North-West Coast of America, lying Westward of the Rocky Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties, upon such terms of settlement as might be agreed upon; and thereupon, by Article I. of the said Treaty, the line of boundary to be thereafter observed between the Territories of Great Britain, and those of the United States of America, then in question, was established by mutual compromise and agreement.

That, by Article III. of the said Treaty it was provided: That in the future appropriation of the Territory South of the 49th parallel of North latitude, as provided in Article I. of the said Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who might be already in the occupation of land or other property lawfully acquired within the said Territory, should be respected: and by Article II. of the same Treaty it was further provided, that from the point at which the 49th parallel of North latitude should be found to intersect the Great Northern branch of the Columbia River, the navigation of the said branch should be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described should in like manner be free and open.

That, under the settlement of the boundary line agreed upon by the said Treaty, and defined by the first Article thereof, the said territory, whereof the Hudson's Bay Company then had the actual and exclusive control, possession, use and enjoyment as aforesaid, fell within and under the Sovereignty and Government of the United States, and under a just construction of the said Treaty, and of the obligation therein assumed, that the possessory rights of the Hudson's Bay Company should be respected according to the true intent and meaning of the same, the United States became and were bound to uphold and maintain the said Company, in the free, undisturbed and continual occupancy, use and enjoyment of all the

rights, possessions and property, then by them possessed and held, and to protect and indemnify them from aggression and injuries, by or through any person acting, or claiming to act, under the authority or the laws of the United States.

That the rights which the United States were so held to respect, and in the enjoyment of which they were bound to uphold and maintain the Company, consisted of:—

First,—The free and undisturbed possession, use and enjoyment in perpetuity, as owners thereof, of all the posts, establishments, farms and lands held and occupied by them, for purposes of culture or pasturage, or for the convenience of trade, with all the buildings and other improvements thereupon.

Secondly,—The right of trade in furs, peltries and other articles, within and upon the whole of the said Territory, and the right of cutting timber thereupon, for sale and exportation.

Thirdly,—The right to the free and open navigation of the Columbia River, from the point at which the 49th parallel of North latitude intersects the Great Northern branch of the said river, down to the ocean, with a like free and open use of the portages along the said line.

That the said rights have not been respected, according to the terms of the said Treaty, and the obligation of the United States resulting therefrom; but on the contrary, by and through the aggressions and proceedings of persons acting, or claiming to act, under the authority of the Government, or of the laws of the United States, have been violated and restricted, and in great part extinguished and destroyed; and the Company by reason of the said aggressions and proceedings have been compelled in many cases to relinquish the same.

That, by the Treaty concluded on the 1st day of July, 1863, it was agreed that all questions between the United States authorities on the one hand, and the Hudson's Bay Company on the other, with respect to the possessory rights and claims of the latter, should be settled by the transfer of those rights and claims to the Government of the United States for an adequate money consideration.

And the Claimants now submit a detailed statement, and valuation of the said rights, severally, under their distinct heads or classes; and of the claim of the Hudson's Bay Company under and by virtue of the said Treaty and of the premises herein set forth:

I. LANDS AND TRADING ESTABLISHMENTS.

The forts, posts, establishments, farms, pastures, and other lands, with the buildings and improvements thereupon, held and possessed within the said Territory by the Hudson's Bay Company, for their own sole use and benefit, at the time of the said Treaty of the 15th June, 1846, and for a long time before, which had, in some instances, been acquired from prior occupants, and in others, had been erected and made, and originally settled and occupied by the Company, were as follows:—

The Post at VANCOUVER, so called, consisting of a stockaded fort, with dwelling houses, store houses, school houses, houses for servants, shops, barns, and other outbuildings, with a stockade and bastions, erected at great cost and of the value of fifty-five thousand pounds sterling (£55,000): other dwelling houses and granaries, dairies, barns, stables, and farm buildings appurtenant to the said post for the purposes of farming and trade, built at various points near to the main post at Vancouver, and on Sauvé's Island, together with saw mills and flouring mills, forges, workshops, and store houses, erected at a great cost at the time, and of the value of forty-five thousand pounds sterling (£45,000); the tract of land occupied, possessed, and used by the Company for its post at Vancouver, including its stations, enclosed and cultivated fields, and the pasturage for its cattle, horses and sheep, extending in front along the bank of the Columbia River, about twenty-five miles, and backward from the said River about ten miles, and Menzies' Island, so called, occupied, and used for pasturage; these tracts of land, with the agricultural improvements made thereupon, at a great cost, were, at the time of the said Treaty, of the value of seventy-five thousand pounds sterling (£75,000.)*

The said several sums making together the entire sum of one hundred and seventy-five thousand pounds sterling. (£175,000) equal to eight hundred and fifty-one thousand six hundred and sixty-six dollars and sixty-seven cents.....(\$851,666.67.) the Claimants aver to be the value of the fort, buildings, land and establishment at and near Vancouver and on Sauvé's Island, which they are entitled to claim and receive for the same.

* This sum is increased by the motion to amend, in the sum of \$413.666 to be added to the sum of \$851.666.67 making 1,265,332.67.

A large portion of the land thus occupied, possessed and used, has, since the 15th day of June, 1846, been taken from the possession of the Company by American settlers claiming under the land laws of the United States, and the Company was dispossessed of the fort and establishment at Vancouver, and the land near thereto, by the orders of the military officers of the United States, in the year 1860.

The Post at CHAMPOEG, consisting of one dwelling house, one granary, and outbuildings, all of the value of three thousand pounds sterling (£3,000); and of the enclosed land of the value of two hundred pounds sterling (£200): and, in addition, certain town lots in the town of Champoeg, purchased of American settlers, of the value of two hundred pounds sterling (£200); making together the entire sum of three thousand four hundred pounds sterling (£3,400) equal to sixteen thousand five hundred and forty-six dollars and sixty-seven cents.....(\$16,546.67.)

The Post at the mouth of the COWLITZ RIVER, consisting of dwelling house, granaries, and outbuildings, erected by the Company, of the value of four hundred pounds sterling (£400); and the land occupied and used by them of the value of one hundred pounds sterling (£100); making together the entire sum of five hundred pounds sterling (£500); equal to two thousand four hundred and thirty-three dollars and thirty-three cents.....(\$2,433.33.)

The Post at FORT GEORGE, commonly called Astoria, consisting of dwelling houses, store houses, and outbuildings, acquired by the Company from the prior occupants, of the cost and value of seven hundred and fifty pounds sterling (£750); and two acres of land whereupon the said post is built, and thereto appertaining, possessed and used by the Company, and being of the value of one hundred pounds sterling (£100); making together the entire sum of eight hundred and fifty pounds sterling (£850) equal to four thousand one hundred and thirty-six dollars and sixty-seven cents (\$4,136.67.)

This post was taken possession of in 1849-50 by the officers of the United States.

The Post at CAPE DISAPPOINTMENT, consisting of a dwelling house and store erected by the Company, of the value of one thou-

sand pounds sterling (£1,000); and the land appertaining to the post occupied, used and possessed by them, being one mile square, and of the value of two thousand pounds sterling (£2,000); making together the entire sum of three thousand pounds sterling (£3,000) equal to fourteen thousand six hundred dollars.....(\$14,600.00.)

The last mentioned land, or a portion of it, since the date of the said Treaty, was taken possession of by the officers of the United States for a light house or other public purpose.

The Post at CHINOOK or Pillar Rock—a fishing station—consisting of a curing house erected by the Company, of the cost and value of two hundred pounds sterling (£200); and the land used and occupied by them for said station, of the value of one hundred pounds sterling (£100); making together the entire sum of three hundred pounds sterling (£300) equal to one thousand four hundred and sixty dollars.....(\$1,460.00.)

The Post at UMPQUA, consisting of dwelling house, barn, stables, and outbuildings, erected by the Company, of the cost and value of three thousand pounds sterling (£3,000); and the land used and occupied by them for farms and pasturage, being a mile square in extent, a portion of which was fenced and cultivated, all of the value of two thousand pounds sterling (£2,000); making together the entire sum of five thousand pounds sterling (£5,000) equal to twenty-four thousand three hundred and thirty-three dollars and thirty-three cents.....(\$24,333.33.)

The whole of this last mentioned land is now occupied by an American settler, claiming to hold the same under the laws of the United States.

The Post of NEZ-PERCÉS, commonly called Walla Walla, consisting of two dwelling houses and servants' houses, storehouses and other buildings and outbuildings, walls and bastions, all built by the Company, of Adobé brick, and of the cost and value of three thousand two hundred pounds sterling (£3,200); the land on the Columbia River occupied and used as belonging to the said post, and also the land along the bank of the said river used for the landing of the Company, of the value of ten thousand pounds

sterling (£10,000); the lands surrounding the fort, used as pasturage, of the value of two thousand pounds sterling (£2,000); the farm near the Post, being of some thirty acres, more or less, in extent, of the value of one thousand five hundred pounds sterling (£1,500); making together the entire sum of sixteen thousand seven hundred pounds sterling (£16,700) equal to eighty-one thousand two hundred and seventy-three dollars and thirty-three cents.....(\$81,273.33.)

This post and the lands were abandoned by the servants of the Company under the orders of the United States authorities in 1855.

The Post at FORT HALL, consisting of houses, shops, stores, mills, and outbuildings, horse-parks and walls, all of Adobé brick, and of the value of three thousand pounds sterling (£3,000); the lands enclosed and cultivated, of the value of one thousand pounds sterling (£1,000); and the lands occupied and used for the pasturage of horses and cattle, of great extent, and of the value of one thousand pounds sterling (£1,000); making together the entire sum of five thousand pounds sterling (£5,000) equal to twenty-four thousand three hundred and thirty-three dollars and thirty-three cents.....(\$24,333.33).

This post was necessarily abandoned by the Company on account of hostilities between the United States and the Indian tribes in 1856.

The Post at BORSÉ, consisting of houses, and outhouses, buildings, wall and bastions and horse-parks, all built of Adobé brick, and of the cost and value of one thousand five hundred pounds sterling (£1,500); about three miles square of land around the post, used and occupied by the Company for the purpose of agriculture and pasturage, all of the value of two thousand pounds sterling (£2,000); making together the entire sum of three thousand five hundred pounds sterling (£3,500) equal to seventeen thousand and thirty-three dollars and thirty-three cents (\$17,033.33).

This post was necessarily abandoned by the Company in consequence of the hostilities between the United States and the Indian tribes in 1855.

The Post at OKANAGAN, consisting of dwelling houses, servants' houses, storehouses, outbuildings, all of Adobé, stockade and bastions erected by the Company, and of the value of two thousand five hundred pounds sterling (£2,500); thirty acres of land at the fort, used, occupied and cultivated by the Company, of the value of one thousand pounds sterling (£1,000); and near and belonging thereto, other lands for the pasturage of herds of horses, of the value of five hundred pounds sterling (£500); making together the entire sum of four thousand pounds sterling (£4,000) equal to nineteen thousand four hundred and sixty-six dollars and sixty-seven cents. (\$19,466.67.)

The Post at COLVILLE, consisting of dwelling houses, servants' houses, shops, stores, outbuildings, stables, barns, yards, stockades and bastions, flouring mills and appurtenances, all erected by the Company, and of the cost and value of ten thousand pounds sterling (£10,000); three hundred and fifty acres of land, occupied and used and cultivated as farm land, and about five miles square of land occupied and used for pasturage of their cattle and horses, of the value of five thousand pounds sterling (£5,000); the White Mud Farm (appurtenant to this post) with a house, barn and stable, store and outbuildings erected upon it by the Company, of the cost and value of one thousand pounds sterling (£1,000); the land used and occupied as a farm, thirty acres in extent, and of the value of five hundred pounds sterling (£500); making together the entire sum of sixteen thousand five hundred pounds sterling (£16,500) equal to eighty thousand three hundred dollars (\$80,300.00).*

The Post at KOOTANAI, consisting of houses and stores erected by the Company, of the cost and value of five hundred pounds sterling (£500); the land occupied and used for the post, and near thereto, of small extent, of the value of five hundred pounds sterling (£500); making together the entire sum of one thousand pounds sterling (£1,000) equal to four thousand eight hundred and sixty-six dollars and sixty-seven cents. (\$4,866.67.)

* This sum is increased by the motion to amend, in the sum of \$46.233 to be added to it making \$126,533.

The Post at FLAT-HEADS, consisting of dwelling houses and store, and of a small piece of land enclosed as a horse yard, of the value of six hundred pounds sterling (£600) equal to two thousand nine hundred and twenty dollars.....(\$2,920).

All these posts were established and maintained for the support of their servants, and of others in the employment of or trading with the Company, and were not only indispensable for carrying on their trade in the country South of the 49th parallel of North latitude, but were also of great value for the support of their posts and trade in the country North of that parallel. They were connected with and dependent upon each other, and were of greater value to the Company when used together. The farms and pasture lands were also of great annual value.

It may be added, that the discoveries of gold, and other minerals, which have been made within a few years past upon lands within the territory occupied by the Company, prove their value to be much higher than any estimate, which could have been put upon them before their general mineral wealth was known; and although it is not intended to urge this fact as a distinct ground of claim, yet it is manifestly fair, that it should not be without influence in the assessment to be made by the Commissioners.

The Company have been, as before stated, deprived of the possession of some of their posts and farms and other lands, by American settlers claiming under the land laws of the United States; of some by the action of the Officers of the United States; and of others by the hostilities between the United States and Indian tribes; which said tribes had, until the Treaty of the 15th June, 1846, been under the control of, and at peace with the said Company.

The privation of the annual profits and rents of these farms and lands, and the occupation of their posts, and the compelled abandonment of the said posts and farms and lands, have caused to the Company, damage and loss to an amount exceeding fifty thousand pounds sterling..... (£50,000).

The value of the several forts, posts, establishments, farms, pasturages and lands, with the buildings and improvements thereon, amounts in all to the sum of two hundred and thirty-five thousand

three hundred and fifty pounds sterling (£235,350) making together with the sum of fifty thousand pounds sterling (£50,000) for loss suffered, as stated, the entire sum of two hundred and eighty-five thousand three hundred and fifty pounds sterling (£285,350) equal to one million three hundred and eighty-eight thousand seven hundred and three dollars and thirty-three cents. (\$1,388,703.33).

Which the Hudson's Bay Company claim and are entitled to receive from the United States.

II. RIGHT OF TRADE.

The chief business of the Hudson's Bay Company in the year 1846, and for a great number of years before, was, and now is, the trade with Indian tribes in furs, peltries, and other articles. It was a trade of great magnitude, carried on in Oregon over a wide range of country, and involved an extensive foreign commerce. Large sums of money were annually expended in it, and the returns were highly profitable, and important to the general prosperity of the Company.

For the proper and beneficial carrying on of that trade, the Company required, not only to hold and possess the posts, establishments, farms, and other lands already described, but also to have the control, possession, and use of extensive tracts of country; and they had in fact, at and before the date of the Treaty of the 15th June, 1846, in their control, possession, and use, for such purposes, a large portion of the country lying as hereinbefore mentioned on the North-West coast of America, to the Westward of the Rocky Mountains, South of the 49th parallel of North latitude, and known as Oregon. And they had therein and thereupon a right of trade which was virtually exclusive.

The profits derived from their said trade, before and in the year 1846, exceeded in each year the sum of seven thousand pounds sterling.

And such right of trade, and the control, possession, and use, of the said Territory for the purposes thereof, independently of their foreign commerce and the sale of timber, exceeded in total value the sum of two hundred thousand pounds sterling.

Under the settlement of the boundary line by the Treaty of the 15th June, 1846, the said Territory fell under the Sovereignty

and Government of the United States ; and by reason thereof, and of the acts and proceedings had and taken, under and by colour of the authority and of the laws of the United States, the control, possession, and use of the said Territory by the Hudson's Bay Company, for the purposes of their trade, and their rights in the exercise and carrying on of their trade in furs, peltries, and other articles, as well as their trade in the shipment and sale of timber and their foreign commerce, were restricted and denied, and in effect wholly taken away and lost, and for their said rights, and the forced relinquishment and loss thereof they claim the said sum of two hundredthousand pounds sterling (£200,000) equal to nine hundred and seventy-three thousand three hundred and thirty-three dollars and thirty-three cents (\$973,333.33).

III. NAVIGATION OF THE COLUMBIA RIVER.

The Hudson's Bay Company aver, that under the Treaty of the 15th June, 1846, by Article IV (II)* of that Treaty, they have a right to the free and open navigation of the North branch of the Columbia River, from the point at which the same is intersected by the 49th parallel of North latitude, to the main stream, and thence to the ocean, with free access and passage into and through the said river or rivers, and that British subjects trading with them have an equal right of navigation, and that to the Company, and to those thus trading with them, the portages of the said river or rivers along the lines thus described, ought to be and of right are, free and open.

The right thus to navigate the said river, or rivers, and to pass unobstructed over their portages, was and is of great value to the Company, and is also of great and increasing political and national value to the United States ; and for its relinquishment and transfer, the Company claim and are entitled to receive the sum of three hundred thousands pounds sterling (£300,000) equal to one million four hundred and sixty thousand dollars (\$1,460,000).

In addition to the special statements hereinbefore contained, the Hudson's Bay Company submit, that throughout a long series of years, they expended large sums of money, and devoted much

* The "IV" is a clerical error. The article meant is the 2nd.

labour and time in efforts to bring the native population into such a condition, that safe and profitable relations, in regard to trade and general intercourse could be established with them. The exploration of the country, the expenditure for labour and of the parties engaged, the opening of roads, the strong force required as a protection against the Indians, their conciliation, brought about, sometimes by a resort to forcible measures, but chiefly by liberal dealing, effected a great change in the condition of the country, rendering it fit for immediate settlement. These were substantial benefits to the Government and people of the United States, under whose Sovereignty this Territory fell, and could not have been secured without a very large outlay. It is, of course, impossible to give any minute details of expenditures of this class, and of the advantages which the United States have derived from them, but the justice of extending to the Hudson's Bay Company liberal compensation, founded on these considerations, is too apparent to allow of any reasonable hesitation in admitting it.

It is obvious, that of the three classes of claims set forth in the foregoing Memorial, the first only consists of particulars which in their nature admit of direct proof of value, but with respect even to these, the Honorable The Commissioners are earnestly requested to notice, that circumstances which the claimants could in no degree prevent or control, have greatly impaired the means of producing such proof, in the positive and complete form which, otherwise, they would have been enabled to do. Among these circumstances may be specified, the aggressive acts, and the general conduct of American citizens, and of persons acting under the authority of the United States, commencing shortly after the 15th June, 1846, and continuing from year to year, by which the rights of the claimants under that Treaty were violated and denied, and their property and possessions were, in some instances, usurped and taken from them, and in others, were necessarily abandoned. This course of conduct was, perhaps, to be expected; from the anomalous position in which the Company were placed—a foreign Corporation exercising a *quasi* sovereignty, and exclusive rights over territory transferred to a Power, whose policy in dealing with such territory was diametrically opposed to that which the Company pursued, and from which they derived their profits. But however this may be, it is an un-

doubted consequence to the Company, that their rights and possessions have been thereby made of comparatively little value, and the difficulty of obtaining evidence upon them has been rendered very great. This difficulty has been essentially increased by the lapse of time since the claims first arose. A delay of seventeen years intervened, during which the United States, while failing to cause the rights of the Hudson's Bay Company to be respected, continued to refuse any satisfactory settlement of their demands. The inevitable effect of this delay, now extended to nearly twenty years, has been to remove by death, or otherwise, the greater number of important witnesses, and to weaken the evidence which is still available, both by the remoteness, in point of time, of the facts to be established, and by reason of the natural decay or of the disappearance, of much which constituted the value of the rights and possessions, for which the present claims are made.

With respect to the second, and third classes of claims set forth, the Claimants solicit the attention of the Honorable The Commissioners, to the fact before alluded to, that they are of a nature which does not admit of a formal and precise valuation by testimony. Consisting as they do of important rights of trade, and of other rights of a public and national character, they are manifestly of great value. But the estimation to be put upon them, and the amount of the money consideration to be paid for their relinquishment and transfer, must be settled by the judgment of the Commissioners, founded upon their own experience and knowledge, aided by public documents and the recorded opinions of statesmen and writers of authority, and by such general estimates under oath as it may be possible to obtain.

The Claimants have made the foregoing statement and observations with respect to evidence, for the purpose of urging for the serious consideration of the Honorable The Commissioners, that in their examination and decision of the present claims, they ought not to be restrained by the rules which are observed in the trial of ordinary issues in Courts of Law. Those rules, under the circumstances, and for the reasons above declared, the claimants contend should be liberally modified and relaxed in the present case; and they respectfully, yet formally and solemnly, protest that a strict application of them, in the consideration of their claim, would be unreasonable and unjust.

In conclusion, the Hudson's Bay Company submit that upon the facts and circumstances, and for the reasons and considerations herein set forth, they are entitled to claim and receive from the United States the several sums here following :

First,—For their forts, posts, establishments, farms, pasturage, and other lands, with the buildings and improvements thereon, as hereinbefore set forth, the sum of two hundred and eighty-five thousand three hundred and fifty pounds sterling (£285,350).*

Secondly,—For the right of trade, as hereinbefore set forth, the sum of two hundred thousand pounds sterling (£200,000.)

Thirdly,—For the right of the free navigation of the Columbia River, as hereinbefore set forth, the sum of three hundred thousand pounds sterling (£300,000.)

The said several sums making together the entire sum of seven hundred and eighty-five thousand three hundred and fifty pounds sterling. (£785,350) equal to three million eight hundred and twenty-two thousand and thirty-six dollars and sixty-seven cents\$3,822,036.67).*

And the Hudson's Bay Company ask that the Honorable The Commissioners will, after due examination, maintain the said claim as just and reasonable, and will decide that the United States ought to pay to the Company, in discharge of their said claims and rights, and for the transfer of them, the said sum of seven hundred and eighty-five thousand three hundred and fifty pounds, in Sterling money of Great Britain, equal to three million eight hundred and twenty-two thousand and thirty-six dollars and sixty-seven cents in gold,* to be paid at the time and in the manner provided by the said Treaty of the 1st July, 1863.

And the Claimants declare, that for the said sum of money, or for such other sum as the Honorable The Commissioners may justly award, they are ready and willing to transfer to the United States all their rights and claims according to the terms of the said two Treaties.

(Signed), CHARLES D. DAY,

Counsel for the Hudson's Bay Company.

DATED, 8th April, 1865.

* This sum is increased by the motion to amend, in the sum of \$459,900 to be added to it.

BRITISH AND AMERICAN JOINT COMMISSION ON
THE HUDSON'S BAY AND PUGET SOUND AGRI-
CULTURAL COMPANIES' CLAIMS.

Motion in amendment of the Memorial.

Inasmuch as it appears by the evidence of record, that the lands claimed by the Hudson's Bay Company at each of the posts of Vancouver and Colville, greatly exceed in value the respective amounts stated and claimed for them in the Memorial in this cause filed; It is moved by the counsel for the Claimants that, in order to equalize their claim with the proof, they be permitted to amend the statement of the value of the said lands contained in their Memorial, to the effect and in the manner following, that is to say:

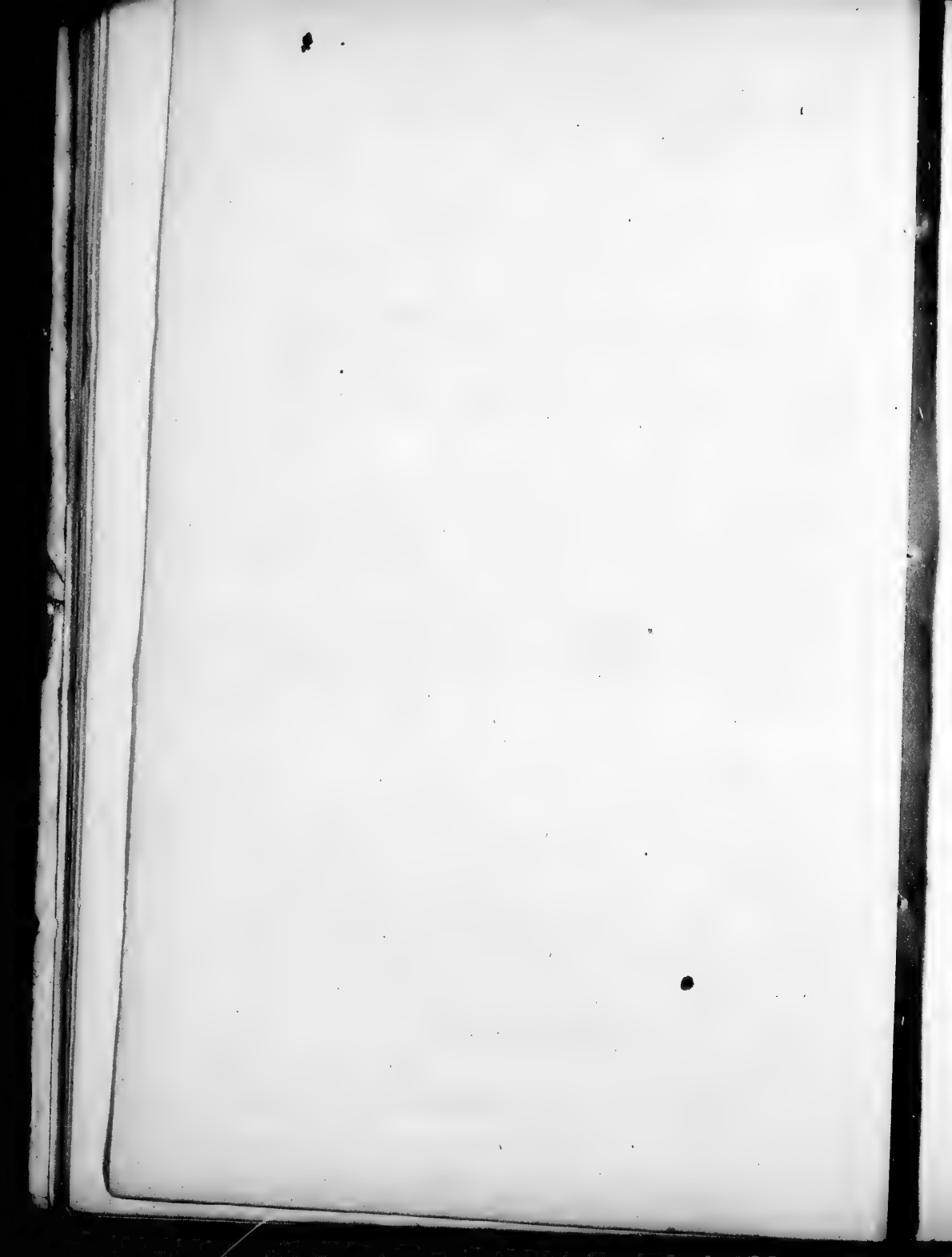
1. That an addition of £85,000 stg., equal to \$413,666.66, be made to their claim for the land at Vancouver, and that such claim be taken and held to be for the sum of one hundred and sixty thousand pounds sterling, equal to \$778,666.66, instead of seventy-five thousand pounds sterling, equal to \$365,000.

2. That an addition of £9,500 stg., equal to \$46,233.34, be made to their claim for the land at Colville and "White Mud Farm," and that such claim be taken and held to be for fifteen thousand pounds sterling, equal to \$73,000, instead of five thousand pounds sterling, equal to \$26,766.66.

And that in conformity with such amendment, the statement in the Memorial of the aggregate value of the rights of the Claimants, and the conclusions by them therein taken, be reformed and increased by adding thereto the said sum of £85,000 stg., and the said sum of £9,500 stg., making together the sum of ninety-four thousand and five hundred pounds sterling, equal to four hundred and fifty-nine thousand and nine hundred dollars, and that the entire amount of their claim be taken and held to be the sum specified in the said statement and conclusions together with the further sum of four hundred and fifty-nine thousand nine hundred dollars thereunto added.

CHAS. D. DAY,
Counsel for the H. B. Co.

"June 10, 1864" *in 9th reg. in another copy of the*



BRITISH AND AMERICAN JOINT COMMISSION ON
THE HUDSON'S BAY AND PUGET SOUND AGRICULTURAL COMPANIES' CLAIMS.

In the matter of the claim of the HUDSON'S BAY COMPANY.

ARGUMENT.

TO THE HONORABLE THE COMMISSIONERS,

In entering upon the duty of submitting to the Honorable Commission the view which the claimants consider themselves justified in taking of this important case, I may be permitted to congratulate all parties concerned in it upon the approaching termination of a long pending and vexatious controversy. The decision now sought is to be final, and the character of the tribunal is a guarantee that it will be wise and just, and will justify the wisdom of two great nations in adopting this fairest and most reasonable of all methods for settling perplexed and conflicting questions of right.

INTRODUCTORY STATEMENT.

The Memorial, containing a full exposition of the claim of the Hudson's Bay Company under the treaty of 1846, which forms the subject of the present discussion, has been long in your hands; and I do not propose to lengthen this statement unnecessarily by repeating the precise terms in which the pretensions of the claimants are set forth in it. It will be sufficient that I cover all the particulars of the demand and all the grounds upon which it rests in a series of propositions, applying in support of them such reasoning and evidence as are available, and then, comparing the propositions with the statements and conclusions of the Memorial, endeavor to shew that the latter are fully established.

No formal answer was made to the Memorial by the Counsel for the United States, but evidence has been taken as if a general denial had been put in.

I must bespeak a large measure of patience for unavoidable tediousness of detail in setting forth the grounds of the claim which has grown out of remote beginnings and amid exceptional circumstances, under relations and agencies far removed from the sphere of ordinary business operations in a civilized and matured condition of society.

In order to a full understanding of the magnitude and nature of the rights involved, they must be traced from the early history of their establishment, as costly as it was laborious and perilous, up to the day on which the claimants were compelled to abandon the country, and to seek at the hands of the United States an indemnity for their loss.

A few words will suffice in reference to the origin of the Hudson's Bay Company. The Corporation was erected by charter (Doc. Ev. A. 1, p. 271) granted by Charles the Second in the year 1670, under the title of "The Governor and Company of Adventurers of England trading into Hudson's Bay" with a perpetual right of trading over a vast extent of country granted to them in perpetuity, and described as "all those seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits, commonly called Hudson's straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish * * * together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal * * * within the territories aforesaid, and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land,"—making the Company "the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving always the faith, allegiance and sovereign Dominion due to us, our heirs and successors, for the same."

Joined to the grant of this vast territory were rights of Government, of administration of Justice in Civil and Criminal Cases, the right of maintaining an army and navy, and making "war or peace with any prince or people not being Christians," with other cognate rights of scarcely less importance. A perusal of the charter, will afford a more complete idea of the largeness of these rights and of the extraordinary comprehensiveness of its general provisions.

The ample powers thus conceded, fell short only of paramount sovereignty, and it is matter of history that they were exercised and gradually extended more in that character than in the spirit of a mere trading corporation.

Moreover, the authority of the Company was constantly recognized and sustained by the British Government, and with the exception of an Act in the 2nd year of the reign of William and Mary, which does not seem to have had any practical result, we find no instance for more than a century and a half, of any attempt to interfere with or restrain its rights. So far, indeed, was it from the policy of Great Britain to endeavor to check, or in any manner to obstruct the operations of this great Corporation, that it encouraged its extension, and the exercise by it of the functions of a governmental body holding practically an absolute control, not only over the wide extent of territory included within the terms of its charter, but also, over that which it gradually acquired by occupation without any formal grant, but with the acquiescence and consent, sometimes tacit sometimes express, of the Imperial Government.

The evidence of Mr. Ellice, a witness, before the Select Committee of the House of Commons in 1857, will show this, and it is to be found stated in all the books of authority on the subject. Mr. Greenhow, an author of high repute, and whose office in the Department of State of the United States gives almost an official authority to his statements, writing in 1844, says in his "History of Oregon and California," (p. 392), "Every thing seems to have been done which could tend to secure for Great Britain the ultimate possession of the whole territory drained by the Columbia without infringing in the meantime on the agreement made with the United States. For this purpose, the British Minister could have no Councillors better qualified to advise, or whose interests were

"more completely identified with those of the Government, than the Hudson's Bay Company." And again, "The Hudson's Bay Company, representing in all respects the interests of Great Britain in North West America, has indeed become a powerful body." "The field of its operations was more than doubled by its union with the North West Company, and by the license to trade, in exclusion of all other British subjects, in the countries west of the Rocky Mountains, where the fur-bearing animals were more abundant than in any other part of the world: while the extension of the jurisdiction of the Canada Courts over the whole division of the Continent to which its charters apply, and the appointment of its own agents, as magistrates in those regions, gave all that could have been desired for the enforcement of its regulations.

"The arrangement made with the Russian-American Company, through the intervention of the two Governments, secured to the Hudson's Bay Company the most advantageous limits in the North West, and the position assumed by Great Britain in the discussions with the United States, respecting Oregon, were calculated to increase the confidence of the body in the strength of its tenure of that country, and to encourage greater efforts on its part to assure that tenure."

An excellent exposition of the largeness of the powers exercised by the Hudson's Bay Company, is given by Mr. Bibb, in his opinion contained in the Pamphlet of opinions on the extent and value of its possessory rights (p. 34). And on page 36 he thus sums up the nature and completeness of its possession of Oregon. "The facts are notorious," says he, "that the Hudson's Bay Company took possession of, and have long used, occupied and enjoyed large tracts of country south of the forty-ninth parallel of north latitude, and established trading houses and posts, strongly fortified, on the most eligible places for trade and traffic; cultivated farms, erected dwellings and mills, and other improvements; opened mines of coal and other fossils, and worked them; kept large flocks and herds ranging over numerous and undefined pasture grounds; cut timber in various places; sawed lumber for domestic supplies, and for exportation; and exercised various other acts of ownership and possession within the territory called Oregon, of a character too strongly marked to be misunderstood as the eviden-

"ces of claims of property and possession made by those professing
 "to be the true proprietors under their charter of incorporation.
 "These acts of ownership have been done, exercised, and made
 "known, before the Treaty between the United States and Great
 "Britain for adjusting the boundary between them, west of the
 "Rocky Mountains, concluded and signed at Washington, on the
 "15th day of June, 1846."

These observations and extracts will suffice to shew in general terms the nature of the position occupied by the Company, as well on the west as on the east side of the Rocky Mountains; the kind of authority and influence it exercised over that whole wide territory; and the light in which such occupation and authority, and the relations of the Company to itself, were regarded by the Government of Great Britain.

The enjoyment of these great powers and advantages was not, however, destined to be held free from challenge and disturbance, for in 1788, long before the Hudson's Bay Company had extended its possessions beyond the limits indicated by its charter, a rival had sprung up in the old North West Company of Montreal.* That association in a few years absorbed into itself all the minor fur-trading associations, and finally by an agreement with the new North West Company, dated 5th June, 1804, the powerful body known simply as the North West Company, was organised and consolidated.

This Company pushing its enterprise across the Rocky Mountains, established its first post on Fraser Lake in the year 1806; then the posts of Kootenais and Flatheads about the year 1808. Thence extending southward it acquired by purchase in October, 1813, from the Pacific Fur Company, the post of Okanagan and a post on the river Spokane, and the post of Astoria, afterwards called Fort George, on the southern shore of the Columbia.†

The rivalry between two bodies, wealthy and powerful as these were, became so violent that it disturbed the peace of the country, and assumed the form of open war.‡ It was indeed so formidable,

* Irving's *Astoria*, p. 19. *Oregon Territory*, Twiss, p. 20. *Greenhow, History of Oregon and California*, p. 260, 261.

† *Greenhow*, 299, n. 303. App. 442. *Twiss*, 21, 25.

‡ *Blue Book, Report Hudson's Bay Co., Ev. of Rt. Hon. E. Ellice*, pp. 223, 224.

that after the report of a Commissioner appointed for the purpose by the Government of Canada, the subject was brought under the notice of the Imperial Parliament, and negotiations were opened in London at the instance of Lord Bathurst, then Secretary of State for the Colonies, through the agency of the late Mr. Ellice, and an agreement was brought about by which the North West Company was merged in the Hudson's Bay Company, under whose charter the business was thenceforward carried on. An Act of Parliament (2 Geo. IV., chap. 66,) was passed for the purpose of giving effect to this arrangement, and of putting an end effectually to the competition which had proved not less mischievous to the parties engaged in it, than to the native inhabitants of the country in which it prevailed. In consequence of this amalgamation and under the Act of Parliament alluded to, Letters Patent were granted by the Crown, first in 1821, and again in 1838, for limited periods, giving to the Hudson's Bay Company an *exclusive* right of trade against all persons other than citizens of the United States—an exception which at that time was of no practical importance, as no American citizens had then established themselves within the territory occupied by the trading posts of the Company on the Pacific coast.*

In the period between the years 1821 and 1846, the Hudson's Bay Company greatly extended its trade over the tract of country known as Oregon, lying north as well as south of the 49th parallel of north latitude. Their posts were increased and became numerous and important; the most southward of them, known as Fort Hall, being situated nearly as low as the 43rd degree of north latitude, while the most northerly, known as Fort Simpson, approached the Russian boundary.

This influence and commercial prosperity, owing, not to the exclusive right granted by the license, but to the fact of the long and undisturbed possession of this vast extent of country, and the control they had obtained over the Indian tribes and all the avenues of trade, were sustained and enlarged by a steady growth and were in their highest condition immediately before and at the time of the treaty known as the Oregon Boundary Treaty.

* See Greenhow App. H. p. 454.

The difficulties encountered and overcome in producing this result were great. The expenditure of time and costly labor in opening roads and establishing communications; the enormous expense of founding posts, and erecting the necessary buildings; the various and formidable dangers of the undertaking, and the combined patience and firmness applied in rendering the natives tractable, will be more particularly noticed in connection with the evidence taken in the case.

In 1846 the portions of country over which the most valuable posts and possessions of the Company were spread, were, by a compromise between Great Britain and the United States embodied in the treaty of the 15th June of that year, awarded to the latter country.

In that settlement, however, of an old and embarrassing dispute, care was taken by the Government under which the Hudson's Bay Company had carried on its work, to obtain from the United States a comprehensive and sufficient guarantee of its rights;—a just precaution upon the change of Sovereignty in all cases, and in this case of evident necessity from the vast extent and value of the interests concerned, the quasi-sovereign character of the great corporation to be affected, and its political relation to the Government of Great Britain, as having occupied, governed, and in a measure civilized the territory about to pass under a new dominion. How important these rights were considered, is proved by the striking fact, that in a treaty consisting of only four articles besides the formal one, three are specially devoted to the protection of the interests of this and of the Puget Sound Company.

The Hudson's Bay Company began early to feel that the change in position was exercising a most injurious effect upon its business and interests, and that it was regarded by the American settlers and by the public authorities with no favorable eye. Urgent representations were made to the British Government, and from time to time by that Government to the United States, for protection and redress, but with no satisfactory result; and meanwhile the possessions guaranteed to the Company were becoming constantly less secure and deteriorated in value, by the hostile and aggressive action to which they were exposed.

Thus the questions arising out of the guarantee as to its extent,

the value of the rights secured, and the aggressions upon them, were agitated and discussed from the date of the treaty up to the year 1863, when by a convention between the two Governments the present Commission was established with a view to the final settlement of all difficulties.

Closing here this introductory statement of the circumstances in which this claim has originated, I will now address myself more directly to the duty of submitting specifically a series of propositions in support of it, which, I trust, I may be able to shew, are sound in reason and law, and are sustained by an ample body of intelligent and unimpeachable evidence.

PROPOSITIONS.

The propositions are five in number ; I submit them in terms which convey the meaning, and, in a great part, the language used in the Memorial.

I.

That under the obligations assumed by the 3rd Article of the Treaty of 1846, that "the possessory rights of the Hudson's Bay Company should be respected," the United States were bound to protect and maintain the claimants free from all disturbance or aggression arising from the change of sovereignty, in the full and perpetual use and enjoyment of all the possessory rights then held by them ; with the exception of such powers and privileges as made part of the essential prerogatives of the new sovereignty.

II.

That under the expression "possessory rights" was comprehended every thing of appreciable value, whether corporeal or incorporeal, of which the Hudson's Bay Company was in the possession and enjoyment in the ceded territory at the date of the Treaty, consisting:—

1. Of all their posts and establishments, with the buildings and all the land attached to or used in connection with them, and all the personal property.
2. Of the right of trade.
3. Of the right of navigation of the Columbia River and its tributaries.

III.

That the possessions, property and rights specified in the foregoing proposition, were of the respective values stated in the Memorial, and in the motion in amendment thereof.

IV.

That the United States have not only failed to protect and maintain the Hudson's Bay Company in its rights, but by their officers and citizens acting under the authority of their Government or laws, have violated and usurped them.

V.

That the United States are now liable to the Hudson's Bay Company for the highest value of these rights, at any time between the date of the Treaty and the production of the present claim; which value, with all damage and loss suffered in consequence of such failure and aggression, ought to be the measure of the adequate money consideration to be awarded by this Commission.

FIRST PROPOSITION.

The first proposition rests chiefly upon the 3rd Article of the Treaty, which is in these terms: "In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first Article of this Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected."

The statement of the obligation assumed in this Article of the Treaty is, that "the possessory rights of the Hudson's Bay Company and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected."

With regard to that portion of the article which relates to British subjects, it does not affect the immediate point of inquiry, and it is sufficient to say in this place that it will hereafter be shewn to have no meaning or application apart from the rights of the present claimants.

The whole article relates in effect to the possessory rights of the Hudson's Bay Company and to them only, and these were to be "respected." The sense and meaning of the word "respected," and the extent of the obligation implied by its use, cannot, it seems to me, admit of reasonable doubt. The expression imports that these rights were not to be violated or impaired by any persons acting under the Executive Authority, or under the authority of the laws of the United States, but on the contrary were to be observed and *respected* by all persons, in the same manner as other admitted rights of property were.

"The term *respect*," says Mr. Stanton, in his very able opinion upon the subject of the rights now under examination, * "imports that they are to be esteemed as of real worth, for such is the evident signification of that word."

And again, he says (p. 32), "hence to respect their possessory rights, according to the spirit and meaning of the Treaty, would seem to imply an acknowledgement of title and interest in the Company, inconsistent with any claim by the United States Government beyond mere sovereignty with a naked fee; the possession and occupation of the lands being a Treaty right belonging to the Company, which the United States are bound to respect. The expression has, moreover, received a judicial exposition from the Supreme Court to the same effect. The American Government is bound, therefore, by the Treaty, to respect as a rightful possession, what might otherwise have been regarded as mere trespass."

His opinion is fully sustained by the cases cited by him (1) and by others of equal authority. (2).

The word "respect," as used in connection with the rights of property by the Supreme Court of the United States, seems to be synonymous with the words protect or maintain. Thus in the case of the State of Rhode Island vs. The State of Massachusetts, 12

* Pamphlet, *Opinions upon the Extent and Value of the Possessory Rights of the Hudson's Bay Company.*

(1) *Clarke vs. Smith*, 13 Peters, p. 201.

Mitchell vs. U. S., 9 Peters, 711, 733.

(2) *State of Rhode Island vs. State of Massachusetts*. 12 Peters, 748 et seq. and authorities there cited.

Johnson vs. McIntosh, 8 Wh., 578.

Peters, we find on p. 749 the following form of expression in which the word occurs: "That when a territory is acquired by treaty, cession, or even conquest, the rights of the inhabitants to property are *respected*."

And in *Mitchell vs. U. S.*, as cited, the Court said: "Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites, and their rights to its exclusive enjoyment in their own way and for their own purposes were as much *respected*."

Again in *Johnson vs. McIntosh*, Chief Justice Marshall in delivering the opinion of the Court said, p. 578: "All the grants made by the Plymouth Company, so far as we can learn, have been *respected*;" and further on in the same judgment he uses the expressions, 'the title of the proprietors to the soil was *respected*,' 'that title was *respected*.' Other instances might be accumulated of a similar use of this word, and if the expression "shall be respected" be of any legal import or virtue whatever, it can mean no less than is stated in the proposition, that the Company should be protected by the United States from the aggressive acts of its own officers and citizens under color of its own authority or laws, or in other words, from any violation or usurpation of its rights in consequence of the change of sovereignty. If the Government, as a mere abstraction, could stand by while these rights were gradually usurped and destroyed, at one time by functionaries assuming to act for the public service, and at another by American citizens—claiming under the Land and Donation laws—and while redress in the courts was rendered practically impossible by the hostility of public opinion, then the expression had no meaning at all. But this no man will contend; on the contrary, we must suppose that the expression was carefully considered, and that it was intended to import, and does import, a substantial and most important obligation.

I am satisfied that after a careful consideration of this proposition, and of the observations in support of it, it will be found to render fairly the true import of the expression, "shall be respected," and of the undertaking and obligations of the United States resulting from the article.

SECOND PROPOSITION.

Having endeavored to show the character of the obligation assumed by the United States, I now proceed to the consideration of the subject matter of that obligation. What were the possessory rights which that Government bound itself should be respected? They are alleged in the Memorial of the claimants and in the second proposition of this argument to comprehend everything of appreciable value of which the Hudson's Bay Company was in the possession and enjoyment in the ceded Territory at the date of the Treaty, or in more specific terms:—

1. The undisturbed and perpetual possession and enjoyment of all the posts and establishments with the buildings, and all the land attached, or used in connection with them, and all personal property.

2. The right of trade.

3. The right of navigating the Columbia River.

As introductory to an examination of the scope and meaning of the words upon which this proposition rests, and of the correctness with which their meaning is rendered by it, reference must be had to the brief sketch already given of the nature of the rights and powers exercised by the Hudson's Bay Company, now for nearly two centuries, on the eastern side of the Rocky Mountains. These powers, as already observed, were not those of a mere trading Company, but were political and judicial, and from their amplitude conferred upon the Corporation a *quasi* sovereign character. They were exercised there by virtue of the direct grant contained in the Charter, but when the Company extended itself over the regions west of the Rocky Mountains, it carried with it, as a matter of fact, the same powers, and held and exercised them there with an authority as complete and undisputed as that conveyed by the Charter. This was of necessity, for its servants were the pioneers of commerce and colonization in a country which knew no law or restraint of civilization. The Government of Great Britain was aware of the exercise of all these powers, and not only recognized them, but became, by the interposition of Parliament and of the negotiations of its Secretary of State, a party to the arrangements under which these high functions were exercised. The suggestion by Lord Bathurst of an amalgamation of the North West and

Hudson's Bay Companies ; the act of Parliament ; the letters of license ; were so many solemn recognitions of the substantial rights of the Company. They were recognitions that that Body was regarded not as an intruder or a trespasser on the public domain of the Empire, but as possessing acquired and admitted rights in the country, representing there British interests and authority, and fit to be entrusted with the power necessary for repressing crime, and ameliorating the moral condition of its savage inhabitants. The Act of Parliament and the letters of license were, I say, recognitions of the rights of the Company, but they were nothing more. The rights existed independently of them. They had been exercised long before the date of those documents, and all that was new were some additional powers given under the Act of Parliament, and the privilege of *exclusive* trade granted for a limited period. But this grant, as has been already said, was of little practical value at that time, for from the state of the country and the condition of the trade, no rivalry was then possible. Indeed the motive for giving the exclusive privilege was not so much commercial as political—a measure of public policy for preserving the peace, and not an act for enhancing to the grantees the profits of their business. This is shewn by Mr. Ellice's evidence and by the preamble of the Act, to which special reference is made (2 Geo. IV, chap. 66.)

The actual position which the claimants held in the North West Territory, in and before the year 1846, is matter of history, and appears as well in public documents and from the narratives of American authors of repute, as from the testimony in the case. The British statement annexed to the Protocol of the 16th December, 1826, in which Mr. Huskisson was one of the commissioners, contains the following passages : *

"Great Britain affirms, and can distinctly prove, that if not before, at least in the same and subsequent years, her North Western Trading Company had by means of their agent, Mr. Thomson, already established their posts among the Flat-head and Kootanie tribes, on the head waters of the northern or main branch of the Columbia, and were gradually extending them down the principal stream of that river." * * * * *

* Greenhow, App. p. 451, 454, and 455.

“ In the interior of the territory in question the subjects of Great Britain have had for many years, numerous settlements and trading posts ; several of these posts on the tributary streams of the Columbia, several upon the Columbia itself, some to the northward and others to the southward of that river ; and they navigate the Columbia as the sole channel for the conveyance of their produce to the British stations nearest the sea, and for the shipment of it from thence to Great Britain. It is also by the Columbia and its tributary streams that these posts and settlements receive their annual supplies from Great Britain.

“ To the interests and establishments which British industry and enterprise have created, Great Britain owes protection. That protection will be given, both as regards settlement and freedom of trade and navigation, with every attention not to infringe the co-ordinate rights of the United States.”

And again in reference to the exclusive possession by the Hudson's Bay Company, it is said in the same document (p. 454), in connection with the proposal to make the River Columbia the boundary between the two nations, “ on our part, Great Britain would have to give up posts and settlements south of the Columbia. On the part of the United States there could be no reciprocal withdrawing from actual occupation, as there is not and never has been a single American citizen settled north of the Columbia.”

A reference to Greenhow in the passages already quoted (p. 392), and to the whole of the chapter 18 from which they are taken, will fully bear out the argument in this respect. In a word, the possessory rights of the Hudson's Bay Company at that time, in the true and complete sense of the term, were rights of property, rights of trade, including rights of navigation, rights of administering justice and rights of government. Of all these rights they were then effectually in the possession and enjoyment ; and these, according to many and weighty opinions, not restricted to any fragmentary part of Oregon, but in and over the whole territory.

Even at a later period, the old mastery of the Company was manifest in its control over the Indian tribes, in the aid furnished to the United States troops in their war with the natives, and in the rescue of American citizens whose lives were in peril from attacks of the savages. No reasonable man can doubt the extent of its

possessions in the country, and its power there at the time of the Treaty.

Without pursuing further this general statement of facts, I return to the proposition which I believe to be sustained :

1st. By documentary evidence of a date anterior to the Treaty of 1846, and the legal inferences based upon it ;

2nd. By admissions and confirmations contained in the treaty itself ; and

3rd. By the testimonial proof, and the agreements, correspondence, and other writings posterior to the date of the Treaty.

The rights specified in the proposition are "possessory rights." It is submitted that this term includes all the rights of appreciable value of which the company was in possession at the date of the Treaty. In itself it imports no limitation of duration or extent, but in its unqualified and largest comprehensiveness covers all rights of which the claimants were in possession, whether such possession rested on a perpetual or precarious title, or was altogether without title, and whether it were possession of corporate capacity, of lands and realty, of trade, of free navigation, or of any other interest whatever.

The true meaning and application of the words which are in themselves so large, are to be sought in the nature and extent of the possession and title which the claimants actually held at the time of the Treaty, and in the admissions and confirmations of such possession and title by the Treaty itself. And it is here to be remarked, that as the Hudson's Bay Company was not and could not be a party to the treaty, and therefore was not in a position to protect its rights, it is entitled to the most liberal construction in its favour, of the stipulations by which those rights are disposed of or in any way affected.

The proposition relates both to the things to be possessed and enjoyed, and to the character and duration of the possession and enjoyment.

Taking up first the consideration of the character and duration of the possession and enjoyment, it is affirmed that they were to be (1st) undisturbed, and (2nd) perpetual.

The legal meaning and effect of the expression, that the possession and enjoyment were to be undisturbed, is sufficiently explained

under the first proposition. They were to be free from disturbance, interruption or aggression, by any persons claiming to act under the authority or the laws of the United States; and it is, I apprehend, not to be denied, that during the legitimate existence of the possessory rights, whether for a longer or a shorter period, they were to be so held and enjoyed, with the same protection which the law afforded to the property of American citizens.

The principal controversy is as to the duration and extent of the possessory rights. On the one hand, the claimants contend that they were perpetual, and amounted virtually and in affect to an absolute right of ownership. On the other hand, it is asserted that the Company was a mere trespasser on the public domain, or at best a tenant for a limited period which has now expired; having no right whatever in the soil, and only an equitable claim to be indemnified for improvements at the lowest valuation.

The precise question therefore which is now to be considered, is what was the nature of the possession and title relied upon.

In entering upon the examination of the nature of the possession and title of the Company, I have to present, according to the classification already announced, in the first place, certain facts and legal inferences based upon documents anterior in date to the Treaty, which seem to me to place the rights contended for beyond doubt.

The possession of the whole of the Oregon Territory by the Hudson's Bay Company, and the commanding position it held there at the date of the Treaty of 1846, have already been stated in general terms. It is now only necessary to particularize in order the facts and documents upon which that statement is based. These are as follows:

1. The North West Company, in and before the year 1821, carried on an extensive trade with the Indian tribes on the west of the Rocky Mountains, and were in possession of several important trading posts there; among which were the posts known as the Kootanais and Flatheads, established by that Company some time about the year 1808, long before there was anybody in the country to dispute its right, and the posts of Astoria or Fort George, Okanagan and Spokane, acquired from the Pacific Fur Company in 1813; also the important post of Walla Walla, established in 1818.*

* See statement annexed to Protocol of 16th Dec., 1826, quoted in Greenhow, p. 451 App. H. See Twiss, p. 21.

The British Government knew of the possession of these posts and particularly of Astoria, or Fort George, and by necessary implication from that knowledge and from official acts, recognized and confirmed it.

2. These establishments were conveyed by the North West Company to the Hudson's Bay Company, by deed (a) dated 26th March, 1821, when the former Company was merged in the latter, which continued to occupy and possess them until long after the date of the Treaty.

3. The merger of the North West Company in the Hudson's Bay Company was in consequence of an examination and discussion had in the parliament of Great Britain, and was brought about at the instance of and by the direct intervention of the Government of that country through one of its Secretaries of State.

4. An Act of Parliament was passed, 2nd Geo. IV. ch. 66 (1821) with a knowledge of the possession of these establishments, and of the trade carried on by the rival Companies, declaring in its preamble that a competition existed between them which for some years had kept the country in a state of continual disturbance, and authorizing the grant of a right of exclusive trade, in order to render competition impossible. This Act was drawn up under the instructions of the late Right Honorable Edward Ellice, a member of Parliament, and then largely interested in and acting for the North West Company.

5. Immediately after the passing of this Act of Parliament on the 5th Dec., 1821, the license of exclusive trade (Doc. Ev. A 4.) was granted, declaring in its preamble that the Hudson's Bay and North West Companies had extended the fur trade over many parts of North America which had not before been explored, and based expressly upon the deed of agreement between the two companies therein specially referred to, and by which the establishments already mentioned and all the rights of the North West Company were conveyed to the Hudson's Bay Company; the Government thus becoming a consenting party, not only to the former possessions of the North West Company, but to the conveyance of them to the present claimants.

(a) Doc. Ev. A 2, p. 277.

The provision in the license entrusting the administration of civil and criminal justice in the Territory in a degree to the Hudson's Bay Company, shews that the Government of Great Britain was aware of the extent and the permanent character of its establishments therein. These provisions, and indeed the whole tenor of the Letters Patent, imply territorial establishments and actual possession of the country.

6. The second License in 1838, (Doc. Ev. A 5, p. 213) with similar admissions and provisions, goes further, and indicates the view of the British Government of the importance and extent of the grant, by making a special reservation of its right to erect colonial governments in the territory. Nothing can more clearly show the extensiveness of the power and rights of the Company as regarded by the authorities of Great Britain than this particular reservation of a sovereign power.

7. The British Statement annexed to the Protocol of the 16th December 1826, distinctly and repeatedly affirms the establishment and possession of Posts, as well to the southward as to the northward of the Columbia, by British subjects (necessarily meaning the North West and Hudson's Bay Companies); and in strong and pointed terms avows the determination of the government to protect "the interests and establishments which British "industry and enterprize have created" both as regards settlement, freedom of trade, and navigation.

8. The country known as Oregon, extended far to the north of the 49th parallel of north latitude. It reached to the 54th degree and was all included in the claim of the United States. The establishments of the Hudson's Bay Company over the whole region, originated in precisely the same manner, and under the same circumstances as those on the Columbia River. They were, indeed, parts of the entire system of settlements in Oregon, comprehended in the recognition already stated. And the British Government granted in its confirmations of title to lands there, 3080 acres of land in Vancouver's Island, which as shown by actual sales, were worth more than the whole of the present land claim at Fort Vancouver. This was done on the ground that the title of the Company was good in equity and that the Government was bound to complete it. The question of

title to this tract was at one time submitted for decision to the Judicial Committee of the Privy Council in England, but was withdrawn, and the right of the Company as proprietor was admitted and confirmed. (Doc. Ev. F 20 a. b. c. d.)

This seems to me to complete the evidence of a title to the lands in Oregon as between Great Britain and the Hudson's Bay Company, which cannot with any reason or semblance of fairness be contested.

Two objections, however, have been suggested. It is said, 1st, That the Convention of 1818 between Great Britain and the United States, concluded both parties from obtaining any rights by settlement. It might be urged in reply to this, that the possession of the claimants through the North West Company of considerable portions of the land claimed, was anterior to that date. But it is not necessary to rest upon this fact, for the effect of the convention of 1818 was not to deny to either party his right in the territory, or in other words, to give to either an exclusive right there; it was, on the contrary, to establish that each might occupy freely without hindrance by the other. The words of the convention * are that, "it is agreed that any country that may be claimed by "either party on the North West Coast of America, westward of "the Stony Mountains, shall together with its harbors, &c., be free "and open for the term of ten years, to the vessels, citizens and "subjects of the two powers, without prejudice to the claims of "either." These provisions were afterwards, in 1827, renewed for an indefinite period. Greenhow says in relation to it (p. 390): "As the advantages offered to the citizens or subjects of the two "nations are not defined, the terms of the convention relating to "them are to be understood in their most extensive, favorable "sense; including the privilege, not only of fishing, hunting and "trading with the natives, but also of clearing and cultivating the "ground, and using or disposing of the products of such labor in "any peaceful way: of erecting buildings for residence or other "purposes, and making dams, dikes, canals, bridges, and any other "works which the private citizens or subjects of the parties might "erect or make in their own countries."

* Greenhow App. K, p. 467.

The conventions were in effect an admission of joint occupancy.* There was in them nothing to prevent the settlement of British subjects or of American citizens in the country. All that was wanted to legalize these settlements of the one class or of the other in relation to its own Government, was the recognition and consent of such Government. Of course, in finally adopting a boundary, each Government would take care to protect its own subjects in the rights derived from itself. This, Great Britain did by the Treaty; but even if it had failed to do so, the right of property of the Hudson's Bay Company would not have been extinguished. It would have been protected, if not by strict rules of International Law, at least by principles of equity so broad and manifest that they could not have been disregarded; for under the terms of these conventions and of the Oregon Boundary Treaty, as already shewn, the claimants could by no possible construction, have been considered as trespassers or usurpers upon the soil. They might not have been permitted to continue their trade as a foreign corporation without a special convention, but they would have been entitled to a fair indemnity, on the United States taking possession of their property. Such must have been the view of the statesmen engaged in making the Treaty. It is a necessary consequence of recognized principles, sustained by the authoritative opinion of the best publicists.† A reference to cases is given below. They are confined to cases in the Supreme Court of the United States, as questions of this class have more frequently arisen there than elsewhere, and have been treated with signal ability and learning. The doctrine is well laid down in the case of *Strother vs. Lucas* cited below.‡

* *Greenhow App. K. No. 2, p. 467: No. 6, p. 471.*

† *Vattel, B. 3, c. 13, sec. 200.*

‡ *Strother vs. Lucas, 12 Peters, 435, 439, 446, 447.*

Society for Propagating the Gospel vs. New Haven, 8 Wh. 481 et seq.

Mitchell vs. United States, 9 Peters, 711, 733 et seq.

United States vs. Wiggins, 14 Peters, 349, 350.

United States vs. Arredondo, 13 Peters, 133.

United States vs. Kingsley, 12 Peters, 484.

Mutual Assurance Society vs. Watts, 1 Wh. 282.

Smith vs. United States, 4 Peters, 511, 512.

Delassus vs. United States, 9 Peters, 133.

The claim of the Hudson's Bay Company then had a basis in public law. It will be shewn hereafter that the Treaty of 1846 admitted, confirmed and enlarged that claim. It superadded to the obligation founded in justice and the Law of Nations, the special assumption of an obligation to respect the rights of the Company not for a limited time or in a qualified manner, but perpetually and absolutely.

A second objection made to the possession or title of the claimants, is that it was limited as to time by the terms of the Licenses, granted the one in 1821 and the other in 1838. This objection rests on an entire misconception. These Licenses originated nothing, granted nothing, but a privilege of exclusiveness. As to the limitation of twenty years, it was made necessary by the terms of the statute, and that limit was inserted in the statute upon the suggestion and at the instance of Mr. Ellice acting for the Company. The statute was in fact passed for the Company, and the license of exclusive trade would have been renewed as a matter of course, or the rights and interests of the Company have been protected in some other satisfactory manner. The answer to the objection has been already given by showing that the substantial rights of the Company were antecedent to the Licenses and entirely independent of them. They were merely an incident growing out of circumstances which rendered necessary the intervention of the Government to prevent violence and bloodshed, and were in fact a measure of police in the form of a grant of a commercial privilege. They recognized, but neither constituted nor increased the rights of the Company in the trading posts and other possessions. As to their trade they added something which may or may not have made it more valuable, but which certainly had not the effect of taking it away. The possession of the country, the trading establishments, the trade itself, existed long before, and it was for the special reason that they existed, and in order to prevent dangerous competition and disturbances, that the added right of excluding rival traders was given. This right was of little or no value, or practical utility, and when it expired it left the Company with all the substantial rights which existed independently of it.

I am satisfied that this is a true and sufficient answer to this objection, and without further remark I submit it for consideration.

The conclusion upon the foregoing statement of facts, and of documentary evidence anterior to the year 1846, and of the legal inferences based upon them is, that taken together, they constitute a body of proof of admitted title, in so far as Great Britain is concerned, which it is impossible to controvert or doubt.

2nd. Having exposed the substantial nature of the title of the claimants, as derived from facts and documentary evidence of consent and recognition by Great Britain anterior in date to 1846, I have, in the next place, to request attention to the admissions and confirmations of that title contained in the Oregon Boundary Treaty itself, as alleged in my second proposition.

It has already been suggested that the Treaty of 1846 is to be regarded as a compromise upon unrecognised claims, and not as a declaration and adjustment of pre-existing rights. It is therefore not to be construed by the rules which apply to that class of boundary treaties in which the antecedent rights of each of the parties to his portion of the divided territory is admitted. There is here no admission of the kind. It is indeed curious to observe with what care all language is avoided which could justify such an interpretation. The nature of the Treaty is declared in its preamble to be the desirableness, for the future welfare of both countries, of removing the state of doubt and uncertainty respecting the sovereignty and government of the territory to which it relates, and thereupon an amicable compromise is made, not for bounding but for dividing it. This language might apply equally well to the division of territory in which both parties had a common and equal right, or to which neither party had shewn any right at all, but which they were mutually appropriating in certain proportions by special agreement. The question, which portion of the territory really belonged to one party, and which to the other, before the appropriation, is avoided. All previous ownership is unasserted. And as if to shew more conclusively, that such is the basis of the Treaty, the 3rd Article speaks of the *future appropriation* of the Territory as *provided by the first Article*. The legal consequence of these forms of expression is, that any ownership which the contracting parties may have claimed, was either a joint-ownership in the undivided territory, or it was virtually and mutually denied that any ownership existed, in the one or the other, and

the right of property was recognized only as dating from the Treaty. Thus the effect of the Treaty upon the territory south of the 49th degree of north latitude, then occupied by the Hudson's Bay Company, was an appropriation of it to the United States from that date, involving a virtual denial to that Government of any previous exclusive right of property in it. It is important not to lose sight of this fact, as it aids materially a right understanding as well of the position and intention of the parties in relation to each other, and to the subject-matter of the Treaty, as of the nature and extent of the obligation assumed by the United States. It removes also the application of the rule which prevails in ordinary boundary treaties, by which all titles granted by or derived from the Government, whose rights are shewn by the settlement of the boundary to be unfounded, are rendered null, and makes applicable the converse rule, by which, in cases of rightful possession by a Government which afterwards cedes its rights, all its previous grants and titles in the ceded territory are binding upon the new sovereignty.

The expressions found in the 3rd Article of the Treaty, to which I now proceed, are, that "the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected." With regard to that portion of the Article which relates to British subjects, it is to be remarked, that its only possible application, in view of the facts under which it was written, must have been to the persons in the employment of the claimants who might have been in the occupancy of lands with their consent. The testimony given by Mr. Lowe (pp. 17, 18) and several other witnesses for the claimants shews that under apprehensions for the future, and in order to protect their property a number of the servants of the Company were directed to enter land claims according to a law of the Provisional Government of Oregon; but the land continued without change to remain in the possession of the Company. These claims being held merely for the use and benefit of the Company were afterwards formally abandoned in its favor. This however was of no importance; for if it had not been done, there was no occupancy or improvement by the claimants to give them any title under the law. The numerous

extracts from the Record office filed by the Respondents are a needless supplement to the evidence of the claimants in this respect ; for they merely show in another shape what was sufficiently proved before. There were no other British subjects then in the country —none who did occupy or could have occupied land lawfully acquired from any other source than the permission of their employers. Such was the fact independently of the prohibition contained in the grant of exclusive trade. The expression lawfully acquired, used under these circumstances, indicates therefore the opinion then entertained by both contracting parties, that land might be so lawfully acquired from the Company. But the admission that they could give title necessarily implies that they were regarded as themselves possessing title. From these premises there results a two-fold conclusion : 1st, That the right of the Hudson's Bay Company to the land held by them was then regarded as a right of ownership ; and 2nd, That the Article is to be read, not as contemplating two separate interests, but as carefully intended to comprehend all the interests of the Hudson's Bay Company, and of it alone. This interpretation is consistent with the condition of the country and state of the facts at that period, and with the prohibitions contained in the Letters of License. Any other conclusion leads to the absurd result, that this phrase of the Article relating to British subjects was adopted without practical meaning or possible application.

There is another strong indication that the United States as well as Great Britain regarded the right of the Company as a right of ownership. It is to be found in the 4th Article of the Treaty, relating to the property of the Puget Sound Agricultural Company. The language of the Article is as follows :

“ The farms, lands, and other property of every description
 “ belonging to the Puget Sound Agricultural Company on the
 “ north side of the Columbia River, shall be confirmed to the said
 “ Company. In case, however, the situation of those farms and
 “ lands should be considered by the United States to be of public and
 “ political importance, and the United States Government should
 “ signify a desire to obtain possession of the whole or of any part
 “ thereof, the property so required shall be transferred to the said
 “ Government at a proper valuation to be agreed upon between the
 “ parties.”

No man can fairly deny that this language imports an admission of a right of property. But the lands referred to in this article were in the same territory, and acquired and held in the same manner and under precisely the same conditions, as the lands of the Hudson's Bay Company, subject, however, to an important exception; viz., that those lands were acquired and held through the permission of that Company. If then there was a right of property in the one, there certainly was, by stronger reason, in the other. If it be asked why the same form of expression was not adopted in both articles, the answer is obvious. In the 4th article, the rights to be preserved were of a simple nature and clearly defined. The Puget Sound Agricultural Company, an unchartered Joint Stock Association, held these lands for agricultural purposes only, and it was an easy matter to ascertain and deal with their rights. They were either to receive a formal title to the property or to be bought out. But the Hudson's Bay Company was a great and powerful corporation, not only possessed of large tracts of land, but having other important interests, in its right of trade and of navigation for which the possession and use of its posts and establishments as a whole were indispensable, and added to these certain higher rights, of a political and judicial character. All these rights and interests, which neither party to the Treaty could approximately define, and which the Hudson's Bay Company, being no party to it, was not called upon to do, the United States could not safely undertake to confirm or to buy out. The comprehensive term, that the "possessory rights" should be "respected," was therefore used, and a more comprehensive term it would be difficult to find. For it includes not only things of which the Company had the ownership, but all things corporeal and incorporeal of which they then had the possession and enjoyment, and even what before might have been a precarious possession, was by these terms of the Treaty converted into an absolute and perpetual right.

Having shewn the position occupied by the claimants in the North West Territory; the nature of the authority and powers held and exercised by them there; the precise character and foundation of their possession and title; and the extent of the obligation assumed by the United States under the Treaty of 1846, I now proceed to show by the proof of record, the description and extent

of property and interests indicated by the expression, "possessory rights," as used in the Treaty and comprehended within such possession and title. And in order to avoid useless repetition, I propose to submit in the same connection the evidence of their value as stated in the third proposition.

The evidence relating to the posts and establishments with the land attached, and the buildings and personal property, will be first presented, taking them up in the order in which they occur in the Memorial. Then will follow the evidence relating to the extent and value of the Company's trade, and finally that concerning the navigation of the Columbia River.

EVIDENCE ON THE SECOND AND THIRD PROPOSITIONS.

In endeavouring to arrive at a just conclusion upon the extent and value of the property and rights of the Company, a careful discrimination must be made between the different kinds of testimony adduced, and the consequent weight which is to be attached to the statements of the several witnesses examined on the one side and on the other. This discrimination will be more particularly applied in presenting in detail the several depositions, but it may now be observed, as a general difference between the estimates made in the evidence for the Company, and those found in the counter evidence of the United States, that the former are based upon positive and precise knowledge, derived from long and intimate acquaintance with the property, the trade and the whole subject to which they relate, while, with few exceptions, the counter estimates are derived from persons whose opportunities for forming a judgment were occasional and imperfect.

Another important difference is, that few of the witnesses of the claimants have any motive influencing them in favor of the claim, and several have an interest decidedly hostile to it. But with respect to the witnesses for the United States, it may be fairly stated of most of them, that there is in their evidence so much of hostile feeling, more or less manifest, that no prudent man acting in a judicial quality can safely assume it as a basis for his decision. I content myself with merely noticing at this time these obvious and important differences of character between the testimony of the claimants and that adverse to them. It will be my duty hereafter

to establish, by reference to the depositions themselves, how marked and substantial these differences are in particular and numerous cases. They must be carefully considered not only as affecting the credibility of witnesses, but also in connection with the disadvantages under which the claimants have labored in making their proof. For, added to the difficulties set forth in the Memorial, arising from the long lapse of time, from depredations upon the property, from natural decay, and from the death of the most important witnesses, is the hostile feeling alluded to, which pervades and influences the whole population where alone witnesses were to be sought. This feeling, in many instances, results from the fact that the witness is himself in the possession of lands belonging to the claimants, in others, from personal disagreement with the Company or some one of its officers, and in all cases is either originated or intensified by a national dislike to a foreign corporation of great power, holding large possessions and exercising extensive influence in their midst. It is not too much to say that this sentiment, amounting to bitter hatred, is all but universal, and that while many of the witnesses for the defence are unwilling to avow it, others, of a bolder character, frankly admit the fact. The monstrous hardihood of the Company in making its claim, is the popular theme of politicians, and furnishes an inexhaustible topic of declamation and invective to the local press, which during the whole time of taking evidence in Oregon, spared no effort to encourage witnesses on the one side, and to denounce and deter them on the other. Every man who could say anything true or conjectural, was eager to testify against the unpopular body which appears as claimant. Public men, or those intending to become such, made political capital out of it. Others went with the current; many of them gratifying either their vindictiveness, or their interest, or both; while, on the other hand, those in possession of knowledge which would sustain the claim, were naturally unwilling to make themselves obnoxious to all around them, and to incur the imputation of want of patriotism, and not unlikely, of baseness and corruption. All this was the more mischievous as witnesses could not be brought up by compulsory process. A reference to the file of local newspapers produced, (Doc. Ev. F 22, p. 480), which might have been increased to a very great number, and to some of the depositions which will be here-

after noticed, will show how amply these observations are sustained by facts.

But notwithstanding all these disadvantages, it will be found that the depositions in favor of the claimants present a body of evidence which is compact and satisfactory beyond what could reasonably have been expected, and which, in its material points, the defence, with all its odds of great advantages used with the highest ability and the most energetic efforts, has been unable to overthrow.

I propose to take up the evidence relating to the various particulars of the claim in the order in which they are stated in the Memorial, first going over the material facts stated by the claimants' witnesses; and then giving a comparative exposition of the depositions for the defence, in so far as they have any bearing upon the questions submitted.

The possession by the Hudson's Bay Company necessary to sustain its claim, is, after the Treaty, the first essential fact to be shown. This has already been done in a great measure by the documentary evidence to which reference has been made in the preceding pages of this argument. The testimony which bears upon the subject remains to be presented. In entering upon the examination of the depositions, it is necessary to remember that the date of the possession relied upon is June, 1846. The possessory rights of the Hudson's Bay Company in which they were entitled under the Treaty to be protected by the United States, were those held by them at that time, and no decline of this possession, in its extent or in the energy of its assertion afterwards, can affect these rights as they then existed. Nothing but the unequivocal alienation of them voluntarily, and free from any form of pressure, direct or indirect, arising from change of sovereignty, can afford a justification for confining them within limits narrower than those which existed at the conventional point fixed by the terms of the Treaty.

Mr. Coxe, in his elaborate and very able opinion on the subject of the rights of the Hudson's Bay Company, to be found on page 5 of the Pamphlet of Opinions on that subject, says:—"It must, I apprehend, be conceded that the possessory rights of the Company are secured by the Treaty as they existed at its date. Under the authority of the British Government they appear, with the knowledge and at least the implied sanction of that Government, to have

“ exercised an unlimited authority, as well to grant to others, as also
 “ to appropriate in severalty, the absolute proprietorship of such lands
 “ as they pleased. No particular formality was prescribed or seems
 “ to have been required or followed in segregating these particular
 “ portions from the common mass, and indeed any such would obvi-
 “ ously have been unnecessary and superfluous. * * *
 “ Any act indicating the intention must necessarily have been all-
 “ sufficient.”

The precise fact then to be established in this part of the case, is : that in June, 1846, the Hudson's Bay Company was in the possession and enjoyment of the lands and posts described in the Memorial, and for which compensation is thereby claimed. The testimony on this subject is partly general, shewing the comprehensive and complete mastery and occupation which the Company had over the length and breadth of the country then known as Oregon, and partly special, applying to particular posts and tracts of land lying within designated boundaries.

The general fact of possession by the Hudson's Bay Company, and of its control and authority over the whole region known as Oregon, at the date of the Treaty, is fully established, independently of the depositions, but it is also confirmed in these by the concurrent statements of numerous witnesses of the highest character on both sides.

Indeed, the perusal of the whole body of evidence leaves no room for doubt upon this fact ; the statements showing it, which are explicit and frequent, occur, for the most part, in connection with other subjects, and in order to avoid repetition will be noticed in commenting severally upon the depositions.

I pass at present to the evidence which applies specially to the posts and establishments with the buildings and tracts of land designated in the memorial. These are 14 in number. The first of them and chief in importance and value is

VANCOUVER.

The post at Vancouver, with the buildings and tract of land possessed by the Company is declared to have been worth £175,000 sterling—equal to \$851,666.67. Of this sum £75,000 or \$365,000 are declared to be the value of the land, which is described as

extending in front along the banks of the Columbia River about 25 miles, and backward about ten miles. The Fort and buildings are estimated at £100,000, equal to \$486,666.67.

It is believed, not merely that the allegations of the claimants in relation to this post have been abundantly proved, but that the estimate put upon the land there is shown by the evidence to be far below its actual value at any time between the date of the treaty and the year 1860, when the claimants were forced to abandon it, or the time of making the present claim. An application has therefore been submitted by motion to increase the claim for the land to the sum of £160,000 stg. equal to \$778,666.66 in order to meet the proof of record.

The best history and description of the post are given by Governor Douglas in his answer to the 4th interrogatory, which will be found on page 51 of the printed evidence, and by Mr. Mactavish in his answer printed on page 198 and the two following pages. These statements are well worth a careful consideration as giving a key to the importance of this post and to the general extent of the Company's operations. The post was established in 1825

DOUGLAS, (p. 50, and p. 197).—Governor Douglas describes the lands held there by the Company in the following terms:

"The lands used by the Company in the year 1846, and long previously, for pasturage and tillage in the immediate neighborhood of Fort Vancouver, embraced a frontage on the Columbia River of at least twenty-five miles, commencing at a point a few miles above the saw mill, following the main river down to the junction of the "Cath-le-poolt" River, where I think the claim ended. The depth of this claim extended to the country north of the Columbia River, ten miles throughout its whole length, at right angles with its frontage. This land claim, owing to the nature of the country, was found insufficient for the Company's purposes, the pasturage being altogether too limited for the support of the various kinds of stock usually kept or raised by them."

The description given by Mr. Mactavish embraces the same tract and is yet more precise. He says p. 199:

"The land used by the company at Fort Vancouver for the purposes of their business, in 1846, and for years previous, commenced at a point on the Columbia River, about two miles above the saw

“ mill, thence following that river down through its meanderings, until
 “ joined by a small stream, called the Cath-le-poolt, nearly opposite
 “ to the town in Oregon, now known as St. Helens ; this would make
 “ a frontage on the Columbia River of from twenty-five to thirty
 “ miles ; northward, at either end, the claim would run inland for
 “ about ten miles. This land was used by the company for tillage
 “ and pasturage. In the year 1846, the company had, at Vancouver,
 “ large bands of horses, horned cattle, and pigs, besides sheep ; and
 “ in order to feed such a number of animals much land was required,
 “ particularly in the winter seasons.

“ The company made use of all their posts and establishments for
 “ trading purposes and for defence, and exercised ownership over
 “ them and the lands adjacent to them, in the same manner, for pas-
 “ turage and tillage, in order to secure supplies of food for their busi-
 “ ness ; timbered land was also necessary at each establishment for
 “ building purposes, fencing, fuel, &c. Up to the date of the treaty,
 “ in 1846, there were no adverse claimants to land so occupied by
 “ the company at any of the posts ; neither at that period were there
 “ any parties who disputed the company’s rights to the land in ques-
 “ tion.”

The account given by these gentlemen of the extent and value of the post of the Hudson’s Bay Company at Vancouver, show that, in 1846, and for a year or two afterwards, the rights of the company in it as now claimed were unchallenged, and that it had the undisputed occupation, use and control of at least the whole tract of land described in the memorial. This account is amply sustained by a great number of witnesses—indeed by all who are capable from personal knowledge of testifying to the conditions of things in 1846.

LOWE, (pp. 8 and 9).—Mr. Lowe says that in 1846, the “ Com-
 “ pany made use of land for farming and pasturage extending
 “ along the Columbia River from a point about one or two miles
 “ above the saw-mill to a small stream falling into the Columbia
 “ opposite the town now known as St. Helens, in the State of
 “ Oregon, a frontage of about 31 miles, and extending back from the
 “ river in some places for a distance of 3 or 4 miles, and in others as
 “ much as 12 or 15 miles. They had also dairies and farms on Sau-
 “ vies Island. *** Lying back of the fort there were several plains

“divided from each other by belts of timber—those known as the
 “1st, 2nd and 3rd plains had each been farmed; the 4th and
 “Caïmas plains were used for pasturage. There was also a large
 “extent of open ground back of the saw-mill, known as the mill
 “plain, all of which was under cultivation. Adjoining the fort was
 “the fort-plain; while some distance lower down the river were
 “situated the lower plains, where a good deal of land had been
 “under cultivation.”

McKINLAY, (pp. 81, 82).—Mr. McKinlay says:—“The ground
 “occupied by the main fort at Vancouver and immediate buildings
 “surrounding it, including the farthest barns, Dundas Castle, and
 “all outbuildings, “would be at least two miles and a half along the
 “river front, and from three quarters to a mile wide, and if the
 “cemetery is to be included, it would be over a mile.

“When I was there in 1840, there were large tracts of land fenced
 “and cultivated, on what were known as the first, second, third and
 “fourth plains immediately behind the fort. I was not on the Mill
 “Plain in 1840, to the best of my recollection. On what is called
 “the lower plain, there were also very large tracts of land fenced and
 “cultivated under wheat and other grains. The Company had tremendous
 “bands of cattle at that time, that ranged from the Prairie
 “du Thé, near Cape Horn on the Columbia, to the mouth of the Cow-
 “elitz River; they went back considerably into that range of hills
 “which runs parallel with the River Columbia, I should say at least
 “15 or 20 miles back. In 1846 I was not over the 1st, 2nd, 3rd,
 “and 4th plains; but the Mill Plain, which I then saw, was under full
 “cultivation, I suppose to the extent mentioned in the list. I also
 “saw the land about the fort in 1846, but do not distinctly recollect
 “going down on the lower plains. As I before stated, my impression
 “is that there was a great deal more land under cultivation around
 “the fort than is mentioned in the list. In 1846 the cattle were scat-
 “tered all over the section of country I have mentioned, although I
 “did not ride about as much and notice them as particularly as in
 “1840, although I think they were decreased in numbers”; and he
 “adds in answer to the interrogatories 40 and 41 on cross examina-
 “tion :

“I have heard particularly at Vancouver the Company claimed
 “from something above the mill to the Cath-la-poodle, some ten or

“ twelve miles in width, a good deal less than the land I described as their pasturage. *** I think the first I heard of the lines of the Vancouver claim defined as above, was during my stay at Oregon City after the Treaty of 1846; I supposed before, the claim was more extensive.”

Mr. Crate, (pp. 106 and 107,) says: “The cattle of the Company ranged above the saw mills as far as the Prairie du Thé, some ten miles up. I have sent men up there for cattle and have been up there myself, and down the Columbia River below the Cath-la-poodle, near the Cowlitz River. I have been there for cattle myself. The cattle and stock ranged back from the river about ten miles. Opposite the saw mill there was a large island in the river, where we procured goose grass for the cattle in the winter, keeping a boat's crew for that purpose, and sending there nearly every day. ** In this tract there were several plains; Mill Plain, 1st, 2nd, 3rd, and 4th Plains, Fort Plain and Lower Plain, also 5th Plain and Le Camass Plain and Prairie du Thé. There was a large amount of land fenced and cultivated. There were several dairies in this tract, and one on an island opposite the fort known of late years as Hayden's Island, so called from the person in possession. There were roads all over this tract made by the Company. I made the road from the saw mill to the Mill Plain, which is about a mile from the mill and from that plain to the Fourth Plain, and from that plain to the 'Camass Plain' and the Prairie du Thé. I built several small bridges. These roads were expensive in consequence of the quantity of clearing necessary to open them and keep them in repair.” And on p. 118:—“I always understood the Company claimed from the Prairie du Thé, 10 or 12 miles above the saw mill, down below the Cath-la-poodle, near to the Cowlitz River, and 10 or 12 miles in width; I also understood it to include Sauvies Island, Hayden's or Menzie's Island, and the Saw Mill Island; I always understood this from my first coming into the country.”

Mr. Simmons says p. 132:—“The Company had large quantities of horses, cattle and sheep; they ranged from Prairie du Thé above the fort, down below the fort to the Cath-la-poodle, a distance of from twenty-five or thirty miles. The biggest portion of it is good pasture land. From the fort to the Cath-la-poodle and above the

"fort it is not so good. There were three dairies; I cannot say whether there were any more. There were a great many milch cows, but I cannot say how many * * * I cannot state the exact quantity of farming land occupied by the Company there; altogether they had four farms under cultivation. The farm at Mill Plain about six miles above the Fort was a large farm. The next farm was adjoining the fort. The third farm was below the fort; that also was a large farm. The fourth farm was then unenclosed, the building and fences having been recently destroyed by fire."

In addition to these witnesses, there is the evidence of Dr. Tuzo, who came to Vancouver at a later period, 1853, and that of Mr. Giddings, Acting Surveyor-General of Washington territory (p. 142-3), who proves the map representing the public surveys, and the tract of land claimed by the Hudson's Bay Company. (See map H filed by claimants.) A number of other witnesses of the claimants speak more generally to the same effect; and of those examined in behalf of the United States, many will be found to confirm the fact of the use and possession by the Hudson's Bay Company in 1846 of the tract of land at Vancouver described in the memorial, and shewn in the map.

In fact, it may be safely asserted, that no evidence of the United States applicable to that date really contradicts the claimants on this point. The question raised by the former is that, although the Company used all these lands for certain purposes, they had legal and exclusive possession of those only which were enclosed or actually cultivated, and that they held no such possession over the unenclosed pasture lands and cattle ranges as would give them a title against others entering upon them. The answer to this objection is: In the first place, there was and there could be no adverse-possession at the time the Hudson's Bay Company assumed and used these lands for their own purposes. They were constantly and continuously so used by them, and there was nobody to dispute their rights so early as 1846, at which date these rights were permanently fixed. There was, I say, nobody, for it will not be gravely contended that the Indians who came from time to time to the Fort for purposes of trade, and with the acquiescence of the Company, turned their horses to feed upon the same pastures, thereby disputed or interrupted the possessory rights of

the Company. Such a pretension would be manifestly and utterly untenable. Then, as to what would constitute acts of possession under the circumstances of the country at that time, we have opinions and judgments of the highest authority which set the matter at rest. Mr. Coxe, in his opinion upon the subject, says,*—

“It cannot, in my judgment, and from the evidence accessible to me, be contended, with any shadow of reason, that actual surveys, lines of exact demarcation, enclosures, or anything else defining and circumscribing the extent of ground thus appropriated or reserved, such as might be necessary in the case of a private individual asserting an adverse possessory right against a paramount legal title, can, under any circumstances, be required as an essential foundation or support of the title of the Company. The felling of timber *sparsum* throughout a tract of forest land, the pasturing of cattle over plains and hills, are all legal acts of ownership, and, under circumstances, would constitute the most conclusive evidence of such possessory rights as are recognized and protected in the treaty of June, 1846.” Mr. Webster (p. 6) says: “The local extent of these possessory rights it may be in some degree difficult to fix or define. This must depend upon facts and the nature of the occupation, wherever there has been a possession, according to the use originally intended, there and to that extent the possessory right attaches. On this part of the case, concurring with Mr. Coxe, I have nothing to add to his remarks.” In Mr. Stanton’s opinion (p. 30, 31) the subject is dealt with most conclusively in the following terms:—“They [the Company] are not to be limited to actual erections, enclosures, or improvements. Their possessory right is not to be estimated by the mere *possessio pedis*. The term of the treaty ‘possessory rights’ being a relative term, is to be interpreted according to the subject-matter, the nature and purpose of possession, even in case of intruders without color of title, holding against the rightful owner. Settler’s possessions have been defined in the State of Pennsylvania, where such claims have been much discussed, as embracing the whole of an

* Pamphlet, *Opinions upon the Extent and Value of the Possessory Rights of the H. B. Company*, p. 5.

“unseated tract where the settler has entered, claiming and exercising ownership, putting up buildings, clearing and fencing more or less, *using it according to the custom of the country*, the clear land either as arable, meadow or pasture, and the woodland for obtaining timber *as often as the settler shall have occasion for it to answer his purpose, &c.*” * And again: “Exclusive possession and dominion under sanction of the Crown has been strenuously claimed and diligently exercised over the whole territory north of the Columbia river, for the Hudson Bay Company came into possession of *all those parts*, extending their posts *north, east, south, and west*, and settlers were encouraged with assistance and protection.† Large trading establishments were built, forts erected, settlements made, vast quantities of timber cut and exported.‡ Every intruder was removed.§ Walls, enclosures, monuments, and the like, serve to indicate appropriation and possession, and as such *indicia* only, have any importance. The exclusive possession and absolute dominion of the Hudson Bay Company could not, therefore, have been more effectually exercised, nor more plainly manifested by actual ditch, wall, and rampart, around the whole territory, and this with the knowledge and sanction of the British Government.”

“So that, by the treaty, this Government holds the territory north of the Columbia in fee, encumbered with a right of occupation by the Hudson’s Bay Company, which is valid until extinguished by transfer, and would bar ejectment; for it has been repeatedly decided by the Supreme Court of the United States, as a settled principle, that the right of occupancy is as sacred as a fee-simple,|| and the possessors of hunting grounds are to be protected in their possession, although the fee be vested in the State. “The right of occupancy in hunting grounds has been protected by the political power, and respected by the Courts. So this Court and the State Courts have universally held.”**

* 7 Watts Rep. 530; 3 Penn. St. Rep. 216.

† 25 Silliman’s Journal, 325.

‡ Greenhow’s Oregon, 33, 400; 5 Wilkes’ Nar., 136.

§ Cong. Debates, Mr Owen.

|| 6 Cranch 87, 8; Wheaton, 535; 9 Peters, 746; 13 Peters, 192.

• Mr. Justice Catron, in *Smith v Clarke*; 13 Peters, 201.

I leave here the fact of the possession of the Hudson's Bay Company as fully established, and proceed to examine the evidence bearing upon the question of value of the land and buildings. The number and extent of the latter, with the estimates of their cost and value, are given at and between two distinct dates, the one in 1846, the other in 1860, when the Company was compelled to abandon the place. A list is fyled marked A, containing a full detail of the buildings at the former period, and the Company considers itself entitled to claim for them a sum which shall not be less than their value as they then existed. The claim to be so paid is grounded upon the facts that the rights of the Company and the obligations of the United States were fixed at that date by the Treaty, and that the deterioration in the condition of the buildings and consequently of their value were the inevitable result of the failure on the part of the United States to fulfil its obligations under the treaty.

It became certain in a short time after the treaty that the Hudson's Bay Company could not depend upon the free exercise of its trade or even upon an unchallenged and secure enjoyment of its property. This will be abundantly shewn hereafter in dealing with the fourth proposition, and it may be noticed here that Gov. Stevens, in a report produced by the respondents, contended that the Company had no right, after 1846, to trade with the Indians; and that a most valuable mill was taken possession of, or *jumped*, by a man of the name of Taylor, upon the principle that it was built after that year. It would have been unwise in the claimants to continue to keep up in the highest condition, or renew extensive buildings, when their possessions were thus imperilled and they were in daily apprehension of being compelled to abandon the country and all they had in it. They made such repairs, however as were necessary for their purposes. The apprehension they felt was not a vain fear, for it has since been justified by the event—and the United States cannot benefit from its own wrong, by invoking a depreciation of the property which has been caused by acts for which it is itself responsible. It must be answerable for the buildings and improvements as they stood in a prosperous condition, and not after their value was reduced by neglect and decay from causes attributable to that government, and in some instances, by

its direct aggressions. A reference to the list A p. 119 of the evidence of the claimants, will shew how numerous and extensive these buildings and improvements were in 1846. Their value has also been estimated by different witnesses in the years 1849-50-51-52-53-54, and in almost every other year up to 1860.

As to the period at which the value of the land is to be fixed, it cannot under any circumstances, be put at a less value than it bore in 1846, for reasons already stated—but the claimants are entitled to ask any higher value which it may have borne up to the date of the claim, for they, as owners, are of course the parties to be benefitted by any increase in the value of the property, and had their rights been respected they might have sold it at the time when it would have commanded the highest price. It probably does not much matter in so far as the land at the Post of Vancouver is concerned, as its value proved at either or any period far exceeds the amount claimed: that amount not being one half of the estimation put upon it in direct terms by at least fourteen witnesses of whom three or four have been examined on behalf of the United States without reference to many others from whose statements an equal value must be inferred.

LOWE. (p. 7).—The first witness who speaks to this point is Mr. Lowe, who was in the employment of the Company from 1841 to 1850, and had the most ample opportunity of becoming thoroughly acquainted with the matters upon which he testifies. He quitted the service of the Company many years ago and has now no interest in its business or possessions. It cannot fail to strike the Honorable The Commissioners that his evidence is given with great carefulness and fairness, and is entitled to be received with confidence. He proves the correctness of the detail contained in List A which was made out under his supervision, and states with reference to the extent and importance of the Post at Vancouver that it was the "*entrepôt* for the supply of the different posts owned "by the Hudson's Bay Company on the west side of the Rocky "Mountains. The relation that it bore to other posts was that it "was the *focus* of the whole trade and the head quarters of the "District. *Every post west of the Rocky Mountains was supplied "from Vancouver, both in the interior and on the sea coast.*" That 100 men were employed in farming operations alone there.

That the number of cattle, horses, sheep and hogs was great. That a saw mill and grist mill were in operation and that an extensive fishery gave an average yield of 2000 barrels of Salmon a year. The quantity of land he declares to be about 160,000 acres, which are worth an average price of $2\frac{1}{2}$ dollars per acre, taken all together, (see pages 8,9,10,) and adds that "since 1846 " the site of the Company's old establishment at Vancouver and " the river landing have become valuable from the fact of a Town " having been built there and the land divided up and sold as Town " lots. The farming land has risen from this cause and from the " Town being made the County seat of Clarke County." With respect to the buildings he says: "I would estimate the value of the " buildings at the fort, the barns, dairies, saw mill and flour mill, " in fact the whole improvements as detailed in the list marked " A (excepting the land) at the round sum of *half a million of " dollars.*" His description upon p. 33 of the construction of " the buildings shows that they must have been substantial and " costly. "Most of them," he says, "were built of sawed " timber about 6 inches thick, let into grooved upright posts forming very solid walls; nearly all were weather-boarded on the " outside, and the dwellings and some of the other buildings, " besides, were ceiled with tongued and grooved dressed boards and " had shingled roofs."

ANDERSON. (p. 33).—The next witness on the subject of value is Mr. A. C. Anderson, who also was for many years, from 1831 to 1854, in the service of the Company, with every opportunity for becoming familiar with the business and the subjects of the present claim. He states (p. 48,) the value of the land at Vancouver, with its dependences, to have been two hundred thousand pounds sterling, equal to *nearly a million of dollars*, while he was second in authority with Mr. Ballenden in 1852 and 1853.

DOUGLAS. (p. 49).—The evidence of Sir James Douglas, a man of distinguished ability and of high character and position, has already been in part quoted. He was in the service of the Company in all its grades from 1821 to 1859. Since that time he has had no connection with or interest in it, but has indeed, while Governor of Vancouver Island, been opposed and hostile to it. He proves the detail in List A to be correct without assessing any

specific value upon the property, but in his answer to the 4th Interrogatory, (p. 51,) he gives the following description of it, shewing how great its importance and value must have been.

"The post known as Fort Vancouver, situated on the north bank, and about 100 miles from the mouth of the Columbia River, was the principal establishment of the Hudson's Bay Company on the west side of the Rocky Mountains; the place was first occupied in the year 1825, and was selected in consequence of the beauty of its situation, and its accessibility to ocean-going ships. It was used as a general depot for the trade, the supplies for the other posts, and the districts in the Department all issuing from thence. The country around was extensively farmed for the purpose of raising grain, keeping large herds of cattle and swine, together with the rearing of horses and sheep, for the supply of their several establishments and shipping. It was, in fact, the great centre from which were distributed all the requisites for carrying on their trade, both north and south of the 49th parallel of latitude. It consisted in 1846 of a stockaded fort, with dwelling houses, storehouses, a church and school houses, houses for servants, hospitals, shops, barns, and other buildings. There were other dwelling houses, granaries, dairies, barns, and farm buildings, at various points near to the main post at Vancouver, and on Sauvie's Island, together with saw and flour mills, the mills being both situated on the bank of the Columbia River, the former six miles, and the latter five miles, above Fort Vancouver."

And he adds (p. 52.) "To give some idea of the extent of the farming operations, I will here subjoin a statement of the crops raised in 1846 at Fort Vancouver:"

"Five thousand bushels of wheat.

"Two thousand bushels of pease.

"Three thousand bushels of oats.

"Two hundred bushels of barley.

"Six thousand bushels of potatoes."

"Two hundred and forty acres of land under colewort and turnips, as food for the cattle and sheep in winter.

"The quantity of live stock on hand at the same period was nineteen hundred and fifteen head of neat cattle, five hundred and seventeen horses, eight hundred pigs, and about three thousand

"head of sheep. The staff of officers and men employed on the establishment at Fort Vancouver in the year 1846 consisted of sixteen officers and two hundred and fifteen servants, under articles of agreement, besides a large number of native employés, who were not under formal engagements. This statement may be considered as applying also to the number of officers and servants stationed at Fort Vancouver for many years previous to 1846. The saw mill at fort Vancouver," says he, "cut about nine hundred thousand feet of lumber annually, the price varied one year with another, averaging from \$15 to \$50."

McKINLAY. (p. 72.)—The valuation of the buildings and improvements by Mr. McKinlay, another old servant of the Company, but who, for many years past, has ceased to be so, and has been a merchant in Oregon City, is in the following terms, (p. 83,) "I would say, as my own opinion, merely as a rough statement, I think they could not have been worth less than *six or seven hundred thousand dollars*. They must have cost very near that sum; and, I think, people wishing to buy, with the privileges, by those I mean the land and water powers attached, would have given more than this for them, then and afterwards, and (p. 97), I consider it (the buildings) would have cost parties coming from England and Canada more, and to parties coming from the United States infinitely more, as labor would be much higher there."

Of the land, he says, (p. 84): "If I had been a capitalist, and able to buy land to that amount, with all its privileges, between and including the years 1846 and 1849, I would have given a million of dollars for it, and would have considered it a good investment. The mill privileges were very good and very valuable." And he adds (p. 93): "I believe if the Company had been untrammelled by outside influence, and Vancouver had been open for sale, with the capital and influence of the Company, they might have realized a great deal more than the sum I have named." And to Interrogatory 10, on page 97: "Had the Company's possession at Vancouver been respected, and their rights protected, would, in your opinion, one million of dollars have been an adequate payment to them for their land and improvements at Vancouver at any time from 1846, including that year up to the time you left Oregon?" He answers "De-

"cidedly not." He then gives a detail of prices of produce at Vancouver which justifies his valuation.

CRATE. (p. 104.)—Mr. Crate, who is a millwright, gives in his evidence (p. 105, and following pages) a particular description of the grist and saw mills, three of which were built by him. He states (p. 105-6) their cost and value at the time of construction and for some years after. One cost £15,000 stg., another \$25,000, a third \$80,000, a fourth \$8,000, and a fifth \$15,000; and he says (p. 114) that in 1856 when one of the mills was forcibly taken possession of by an American of the name of Taylor, their then value was \$80,000 to the Company. The amount of lumber cut in the year, he states (p. 112) to have been about 1,800,000 feet—exclusive of what was used for the Company—and the price varied from \$80 to \$20 per thousand, shewing at the maximum no less a sum than \$90,000, and at the minimum \$36,000. He also describes the buildings and the mode of their construction in his answers to Interrogatories 12 and 13 (p. 107, 108.) "I knew" says he "the fort well and all the buildings; they had begun to rebuild before I left in 1843; and when I returned in 1849, many of the buildings had been rebuilt, and most of the stockade and all the buildings had been put in first rate repair. After that time I kept them in repair myself; when Mr. Mactavish was in charge, I put new sills and blocks under those that needed them. The majority of the house were built on what is known as the Canadian style. By renewing the blocks underneath and keeping the sills covered, the buildings would last a long time. The repair gang kept in employment would average about five men. The main buildings of the fort were kept in repair until about the time the Company left; when I left, part of the buildings had been removed by soldiers, and part were still standing. This I believe was done by the orders of General Harney and Captain Ingalls. The fort was surrounded by the buildings occupied by the servants of the Company forming a small town below the fort, and one street adjoining the fort on the Upper side, and dotted houses all over the plain, for a mile. In the lower town was a street for Canadians, one for Kanakas, and one for English and Americans. Most of the English and Americans were spotted around, above and behind the fort. Some of the houses were built Canadian

"fashion, of two or four inch planks ; some were built American cottage fashion, framed and weather-boarded ; some were of squared timber, and some very few of logs, and some few of sawed slabs. The houses were generally one story high, and some of them a story and a half ; some of them were ceiled inside, and some papered ; made of them plastered with clay. This town was in as good condition in 1849 as it was in 1843, and in my opinion better. When I left in 1863 some of the houses were still standing, and a few were occupied by officers of the United States army, and one for a short time by Captain Ingalls." His estimate of the value of the property of the Company at Vancouver is in the following terms (p. 117) : " It would be worth about \$750,000 ; this was when I left in 1863 ; I think it was worth more when the Company left, say \$1,000,000." The witness is a practical mechanic who formerly was in the service of the Company for a great number of years before and after the treaty of 1846, and was employed in building and repairing at Vancouver. He is evidently an intelligent man with a thorough knowledge of particulars, and shews by the manner of giving his testimony that he is careful and conscientious, and is entitled to perfect reliance.

SIMMONS. (p. 128.)—The witness Simmons, an American citizen and an early immigrant, who has been in the country since 1844, describes the land and improvements at Vancouver as they were in that and the following years. He says on p. 131 " the Post consisted of a little over four acres of land picketed in, with many and large buildings on the sides inside of the Fort ; these buildings were stores, warehouses and residences for the officers, and a large building in the centre used as offices. There were also a great many buildings outside used by the servants, and a hospital on the bank of the river, and a church, and it appeared a lively little town. It was a general depot and trading post for all of the Company's business west of the Rocky Mountains," and again on the same page " there was also a saw mill and flour mill, and three dairies and a fishery about six miles below the fort." He values the improvements at \$1,000,000 ; and estimates the land there, including the pasturage and cattle ranges, at \$10 an acre in 1845, and at \$15 at the time of giving his deposition. Mr. Simmons is a farmer, highly respectable, and

much esteemed for integrity of character. He has built mills for himself and been engaged in trade. He was also Indian agent for a period of seven years; from 1853 and previously to that time, a member of the Oregon Legislature. He never had any interest in or connection with the Company, and from his long residence, large experience and freedom from bias, his statements cannot but be considered as giving a true account of the facts.

TILTON. (p. 139.)—Mr. Tilton, a man of ability and character, an engineer by profession, was formerly Surveyor General of Washington Territory, and Territorial Treasurer at the time of his examination. He visited Vancouver in 1859, in a judicial capacity, to decide a contest between several claimants of the land there, to which none of them had any right, but which really belonged to the Company. Mr. Tilton had peculiar advantages from his profession and the nature of his public duties to form a correct opinion upon the matters of which he speaks, and he certainly cannot be suspected of being unduly biassed in favor of the Company. He estimates (p. 140) at "from \$8 to \$12 per acre, say on an average at \$10 an acre, the present value of three miles deep of the lands lying on the Columbia River, between the mouth of the Cath-la-poolt River and a point on the bank of the Columbia River, eight miles above the military reservation at Vancouver." This, which is less than a third part of the tract proved to have been in the possession of the claimants, would comprise about 75 square miles, and at the estimation of the witness would amount in value to nearly \$500,000. Upon cross-examination, (p. 141,) he says: "I know of General Harney's buying 100 acres about two miles above the fort, and half a mile from the river, in 1859, for which he paid, I think, \$12 an acre," and in answer to the next cross-interrogatory, he answers: "I have heard that Vancouver was declining, but in addition to the causes named, I have attributed it principally to the insecurity of land titles there, and believe that had the title been clear for the last fifteen years upon the magnificent town site of Vancouver, the commercial emporium of that region would have been there instead of Portland."

GIDDINGS. (p. 141.)—The testimony of Mr. Giddings is circumstantial and important. He is the present acting Surveyor General of Washington Territory—an American, and entirely unconnected

with the Company. He proves the maps on which the tract of land claimed by the Hudson's Bay Company is marked out, and then (p. 142) makes the following estimate: "I would, in setting a price on this land, divide it into four classes: the Military Reservation; Vancouver town site; the Amos Short claim, and the William Ryan claim; and fractional lots Nos. one, four and five, altogether amounting to about twenty-one hundred and forty acres, are now worth about fifty dollars per acre. The remainder of the land lying south of the north boundary of townships, one and two north ranges, one and two east, and one west, amounting to about forty thousand three hundred and twenty acres, is worth on an average ten dollars per acre. About fifteen thousand acres lying north of the township line just referred to, and along the bank of the Columbia River, averaging from two to two and a half miles in width, I would also place at ten dollars per acre. The balance, amounting to about one hundred and three thousand five hundred and forty acres, is worth at least a dollar and a quarter an acre."

The aggregate of this estimate is \$787,625. And on cross-examination, he states (p. 145): "I only heard of one sale, which was near the Military Reserve; I think this was of a hundred acres, and I understood brought one hundred dollars an acre. I heard of this within the last few months, but nothing was said that I remember about the time when the sale was made." And as his reason for valuing a portion of the land at \$50 an acre, he says (p. 146): "I estimated in that way because it is one of the most beautiful town sites in the territory. If there was no town actually there, I should think it worth the sum named for town site purposes." In connection with this deposition I refer to Mr. Gidding's Report when he was Surveyor General in 1860, in which he says: "The city of Vancouver is situated in See 27 and is a large flourishing and prosperous commercial town." (Doc. Ev. of Claimants, F 19, p. 464.)

Tuzo. (p. 175.)—Dr. Tuzo who has been in the service of the Company since 1853, describes at length the buildings and improvements at Vancouver (pp. 176, 177, 178), and estimates them in detail as they were in 1853 and in 1859, in which latter year many of the buildings had been removed or destroyed. The amount of his detailed estimate of the buildings is about \$200,000, exclusive of the

mills and other buildings and improvements of which trespassers had then taken possession, and this was many years after the date of the treaty, when all the deteriorating agencies, already mentioned, had been operating upon the number and condition of the buildings during the whole intervening period. On cross-examination, the witness is asked (p. 184) what rental the military authorities were paying for a store-house valued by him at \$8,000, and his answer that \$75 per month were paid for it, making \$900 a year, shews that his estimate of its value has a substantial and sufficient basis. The whole of Dr. Tuzo's evidence is given with great particularity and with an assignment of the reasons upon which his valuation of the Post rests. His opinion with respect to the land is contained chiefly in his answer to the 4th interrogatory which shews an aggregate value of more than \$900,000, and is so clear and precise that I give it entire in his own words. He says (p. 179,) "I recognize this map (H) as "a fair representation of the Company's claim at Vancouver when I "last saw it in 1859; but there are many more settlers on that "claim than I see represented on the map. I presume only those "are shewn who had made final proof of their claim at the Land "Office. There were at that date many more settlers on the claim "than are shewn upon the map. The claims of Nye, Ryan, Short, Mel- "lick, Proulx, Petrain and Laframboise, cover nearly all the enclosed "and cultivated lands of the Company in the vicinity of the fort "and on the lower plain, amounting in the aggregate to, I should "think, upwards of 3,000 acres. From my intimate acquaintance "with the expressed opinion of some of the claimants as to value, "and from my knowledge of their business transactions in produce "and stock, I would estimate these lands, simply in an agricul- "tural point of view, to be worth at least fifty dollars an acre. The "land represented by the map as lying between the fort and the "Cath-la-poodle river, along the Columbia, exclusive of the claims "I have mentioned, is composed of rich alluvial bottoms, in part "occasionally overflowed, and very desirable for stock-raising pur- "poses; this portion is nearly all settled, and covers an area of "somewhere about twenty-five thousand acres, and is worth "at least ten dollars an acre for that purpose, more than one claim "having been transferred at about that price, but these lands are "usually esteemed by the settlers themselves at a higher value

" Those claims exhibited on the map along the river front and above
 " the fort, are mostly timbered ; but from their close proximity
 " to the sites of the company's mills the timber is of considerable
 " value. The mill sites formerly occupied by them, and now on
 " the claims of Crate and Taylor, are quite valuable, being the most
 " excellent mill privileges anywhere in the neighbourhood for many
 " miles. Those claims represented as back of the fort and mills,
 " are mostly situated on the first, second, third, fourth and Mill
 " Plains, formerly improved and occupied by the Company, and
 " cover an area, I should estimate, of about 25,000 acres. Their value,
 " from facts within my knowledge, I consider to be at least ten dol-
 " lars an acre on an average, but the majority of the occupants
 " estimate the value at much more. There is much more good
 " land in the vicinity of the claims represented, but farther inland,
 " and it is to some extent occupied by settlers whose names do not
 " appear on the map, and amounts, I should say, to fifty thousand
 " acres, more or less, and is worth, I would say, four to five dollars
 " an acre. The rest of the claim, amounting to about 50,000 acres,
 " is worth at least on an average one dollar and a quarter per acre ;
 " much of it is worth a good deal more, there being many fine bot-
 " toms, swales, and small prairies interspersed through it, but they
 " are not so accessible as the rest, to which there exist very tolerable
 " roads originally constructed by the Company." Independently
 of this in speaking of the town site, (Interrogatory 5, pp. 179, 182,) he says the lots there ranged from \$50 to \$1000, and adds :
 " From facts within my own knowledge, and from the generally
 " accepted opinion of competent judges, I consider that the Com-
 " pany might have realized at least one million of dollars by the
 " sale of a town site at Vancouver, if their possession and title to
 " even the land occupied as a military reserve had been upheld
 " and confirmed to them by the United States Government."

SMITH. (p. 240).—Mr. Smith, who in 1861 was Registrar of the
 Land Office of Washington Territory, and as an American citizen
 and officer of the American Government certainly cannot be sup-
 posed to have any bias in favor of the Company—had occasion in
 the exercise of his functions to visit Vancouver, to hear and decide
 claims to land there which made part of the Company's property ;
 and he necessarily made himself acquainted with the value of the

land. He estimates the mile square 640 acres, including the Hudson's Bay landing, fort, and town site at \$200,000; this he declares to be a low estimate—and adds p. 243, “its value as a town site was impaired by being removed by the military authorities from occupation and improvement.” He then goes on to say:—

“I estimate the value of the farming lands in the vicinity from the revenue which was obtained from farming the lands, as compared with the current rates of interest at that time. On this point I posted myself more particularly, as I was desirous of buying a claim in some portion of the territory. The farmers, and those with whom I conversed in the neighborhood, generally agreed that from good farming and improved land near the town, a revenue of from ten to twenty dollars per acre could be obtained. I, therefore, estimated the value of such land at from fifty to one hundred dollars per acre, as producing a revenue of about twenty per cent. per annum, which was about the current rate of interest at that time. I should give the average of open, good improved land, at about sixty dollars per acre; but this would not, of course, apply to timbered land or soil of inferior quality. The upland prairies and open lands of inferior quality, I should estimate at ten dollars per acre, and the timber land at one dollar and a quarter per acre.” The result of this estimate gives a far higher amount than is claimed for the land by the Memorial and the supplementary motion.

FARRAR. (p. 248.)—Mr. Farrar, a member of the legal profession, who was for several years District Attorney of the United States for the Territory of Oregon, and who has represented professionally the authorities of the Roman Catholic Church and other claims on the land adverse to the Company, explains at length in the course of his deposition (p. 248), the ample means he possessed of becoming acquainted with the value of the lands, and estimates the mile square at Vancouver, including the Old Hudson's Bay Fort, the town-site, and part of the Military reserve, at \$1,000,000 (p. 251), if the title were undisputed. The mile above and the mile below this square mile are estimated at \$150,000 each, making \$300,000, and the lands generally of the Company along the margin of the river, over the whole extent claimed by them, exclu-

sive of these at an average at least of 15 to 18 dollars per acre. His opinion of value is sustained by the assignment of reasons drawn out on cross-examination.

Mr. Farrar, after spending a year or more in Washington, was brought up by the Counsel for the United States for a new cross-examination. The object was to obtain from him a modification of his statement of value by making it depend upon certain conditions. Whatever difference of statement there is, will be apparent by a comparison of two of his answers at the different times. In his first examination in answer to cross interrogatory 6 (p. 254), how he makes up his "opinion that the value of the town site of "Vancouver with a clear title, would be worth \$1,000,000;" he says: "From the facts and reasons hereinbefore stated, that is its "location; its great natural advantages over any other points on "the Columbia River from Baker's Bay to the Cascades; the "natural facilities it has for drainage, and the fact that in my "judgment it is the best and only site for a large commercial place "or city along the main artery of the country, connecting the "Pacific Ocean with the country above, and to the east of the "Cascades Mountains for ocean going Steamers and sail vessels, "and from the further fact that negotiations are now in progress, "which I believe will settle the title to the mission lands, and "result in the location there of the Columbia River terminus of "the Northern Pacific Railroad."

In his second cross-examination, some sixteen months after, he declares in answer to the first interrogatory, (Testimony of U.S. Pt. 3, p. 183), that the negotiations have terminated, and the title to the Mission lands have not yet been determined, and that "the negotiations for the terminus of the Northern Pacific Railroad there "have been abandoned." He then qualifies his former statements by saying he meant to be understood that if these negotiations had resulted as he had anticipated, the land, that is, the Town site alone, would have been worth \$1,000,000 with a clear title. The interposition of this "if" was, of course, intended to neutralize the former estimate, but the attempt is unfortunate for the defence, as the witness in the closing paragraph of his answer says: "Without a good title to that land, and without that being made the terminus of the railroad, those lands would not *then command*

the same price in the market." Not, be it observed, that they were of less value than the \$1,000,000—not that their price in the market would be permanently less than that—but that *then*, at that particular time, they would not command the same price. There is here really no modification of the previous testimony, or if there be, it is wholly unimportant. As to the clear title, there can be no difficulty in the matter, now that the United States by the transfer of them will have the title of the Hudson's Bay Company superadded to its own. There is nothing further in the second cross-examination which requires observation. The Respondents have failed to impair by it, in any degree, the testimony first given.

WALKER. (p. 257.)—Mr. Walker, who filled in Washington Territory the office of Territorial Auditor, and as such, had charge of the assessments of the Territory, and was also, at different times, Probate Judge, Superintendent of Schools, U. S. Commissioner and acting Territorial Secretary, puts the same value as Mr. Farrar upon the mile square of land which includes the town site, viz., \$1,000,000, (p. 260), and considers the farming lands around Vancouver, worth \$25 an acre, adding, that there are some farms, perhaps, that could not be bought for that money.

MACTAVISH. (p. 197).—The only remaining witness examined by the claimants who testifies upon the matters under consideration, is Mr. Mactavish. He is better acquainted than any living man with all the details connected with the establishments, values, expenditures, and business involved in this claim, and his evidence, given with perfect fairness, covers the whole subject in a clear and circumstantial manner. I present but one extract, because his deposition is so important and full in all respects, that it must be carefully studied as affording a complete history and exposition of the whole claim. It amply bears out the allegations of the memorial upon all points relating to the extent and value of lands and buildings at Vancouver, in the year 1846, and also in the years following, up to 1858, when he left that place. He gives a detail of the buildings and improvements in 1846, and estimates their value then from *five to six hundred thousand dollars*, and says that, in 1853, there were still many buildings standing both in and outside the fort, amounting to a considerable sum in value, and that up to the time he left Vancouver in 1858, those in the occupation of the Company were kept

in thorough repair. Many, however, of the buildings outside the fort, on what was called the military reservation, were burnt down, and others removed by authority of the military, during his residence there. He adds, in answer to the 6th interrogatory, (p.202,) a list of the buildings existing in 1858, with a particular account of those which had been destroyed or taken possession of by other parties. The land in 1846, according to his estimate, was of the average value of from two and a half to three dollars per acre including the whole tract of 160,000 acres, and he states, " With respect to the value of the land at Vancouver, I am clearly of opinion that had the Company had entire control to deal with it as their own, without any question as to their title, from the year 1846, and up to 1858, when I left there, taking the fort as a central point, the land above and below it, to the extent of three square miles or 1,920 acres, with frontage on the Columbia River, could have been easily disposed of for two hundred and fifty dollars per acre. The remainder of the land claim of the Company at Vancouver is more or less valuable, according to its locality ; thus, I consider the land on the Lower Plain, having frontage on the river for a distance of five miles, or three thousand two hundred acres, as worth one hundred dollars per acre. Below that again, to the Cath-la-poodle, a distance of probably ten miles, with a depth of two miles, or twelve thousand eight hundred acres, is worth twenty-five dollars per acre ; going above the Fort Plain, and so on to the commencement of the claim, two miles above the saw mill on the Columbia River, say a distance of six or seven miles, and back three miles, or about thirteen thousand five hundred acres, should be worth from ten to fifteen dollars per acre ; the remainder of the claim is worth from one and one and a half to three dollars per acre. The lands at the fort and Lower Plain at Vancouver are of much value, as they were thoroughly cultivated by the Company, and sown with grass, so that the crop of timothy and clover hay alone, to the present occupants annually is a small fortune."

Such is the evidence on this subject of value. I regard it as complete. It shews that the highest estimate of the buildings is \$1,000,000, and of the land \$1,600,000 ; and the lowest for the buildings is \$500,000, and for the land \$789,625, with one excep-

tion, that of Mr. Lowe, who puts the value at \$400,000 in 1846 ; adding, that the town site has since become valuable, and the farming lands have also risen in consequence. These last amounts greatly exceed the values claimed in the memorial. And if an average be taken between the extreme figures, it will give a result of more than \$1,100,000 for the land and buildings at Vancouver, in 1846. Between that period and 1860, the buildings became of less value, but this was far more than compensated by increase in the value of the land.

I trust it will not be lost sight of that this body of evidence, weighty as it is, has been obtained, notwithstanding the loss by death, of numerous witnesses whose testimony would have been of incalculable value to the claimants, as well with respect to Vancouver as to most of the other posts. Of the nine mentioned by Mr. Mactavish, (pages 218-19-20) ; Messrs. McLoughlin, Ogden, Birnie, Lewis, and Peers, were, he says, thoroughly acquainted with the nature and value of the Company's possessions and business. And Sir George Simpson, whose extensive knowledge of everything connected with the present claims, including all the efforts made under great difficulties for obtaining a settlement, would have been an invaluable witness. To the names mentioned by Mr. Mactavish must be added those of Grant and several others of less note.

The persistent refusal by the U. S. Government, of a settlement ; and its long delay in consenting to any mode for the adjustment of the claims, have deprived the Company of the benefit of all this testimony ; and it is earnestly contended that this fact ought to have no small influence with the Honorable the Commissioners in weighing and comparing the evidence which is to guide them in their judgment upon the case.

Before passing from the evidence relating to this post, I have to offer some observations upon the cross-examinations of Mr. Mactavish. These took place at two separate times and by different Counsel. The first consisted of 100 questions, and might, one would suppose, have been considered sufficiently exhaustive. A second was, however, insisted upon, long after the deposition of the witness and the evidence of the claimants were closed ; and although the proceeding was irregular in the extreme, yet in order to avoid

delay, and that no room should be left for the imputation of a wish to suppress facts, it was acceded to, and the result was a new cross-examination of no less than 952 Interrogatories. The art of asking and repeating questions has, I take it, never been more marvellously exercised, and seldom with a less substantial result. Of these 1052 Cross-Interrogatories, I deem it necessary to notice only a very few, and these chiefly relating to the boundaries of the land claimed at Vancouver, and to the time at which the claim of a specific limit was made. In order fully to understand Mr. Mactavish's answers, it is necessary to note, that his replies, on all matters which fell within his particular department or which he personally knew, are fixed and positive ; while those resting upon general impressions or the received opinions of those around him, and upon information derived from others, are, of course, less certain and decided. Of the latter class are his statements in relation to the precise boundaries of the claim at Vancouver, and the time and mode of making such claim. In 1846 and previously, his situation there gave him nothing to do with the general affairs of the Company, and so he continued up to September, 1854. Of the governing officers during that period, Sir James Douglas alone survives. Mr. Mactavish's knowledge upon the subject of the claim was that of a subordinate officer in a different department, whose duty it was not, to inform himself upon it, and who, in fact, had no precise knowledge concerning it. All that he knew personally was, that the Company cultivated a considerable quantity of land at Vancouver, and that a large tract was occupied for the pasturage of its numerous flocks and herds. These were facts within his personal knowledge, but as to the precise extent and boundaries of the pasturage, his statements rested upon the general understanding and the received impressions of those around him, and he had no further knowledge on the subject. This is apparent from his answers, upon his first cross-examinations, to Int. 10 and following Ints. to 18, (p. 223-4) ; and to Cross-Ints. 23-24 (p. 225). These answers show the simple truth as to the nature and extent of his knowledge on these points, and the crucial process to which he was afterwards subjected, has left the matter just where it was left by them.

In his answers, for instance, to all the questions on his second cross-examination, between the numbers 317 and 370, relating to

boundaries, and to all the other questions relating to the same subject, it is evident that he did not pretend ever to have measured the land or personally to have traced out the boundaries, but that he spoke from the general impression that the limits given by him had long before (he knew not how long) been universally understood by the officers and servants of the Company, to indicate the boundaries of the land claimed by it. He saw daily the stock of the Company ranging over large pastures and in remote parts of the tract of land so described, but of course, he could not swear that they went just up to a certain limit in the forest and no further. The pertinacity with which he is urged in this cross-examination to say that the cattle never went beyond or fell short of these limits, or to use the cross-examiner's favorite and oft repeated expression, "up to a certain line and no further," is a device which cannot for a moment mislead any practiced mind. The truth undoubtedly is, that the cattle at times far exceeded the limits specified in the Memorial, but they were usually kept within those limits, and the Company defined its claim accordingly.— This is not, therefore, a question of the utmost extent of the cattle range but of the occupation of the lesser area to which the Company is willing to restrict it. Observations of a similar character may be applied to all the questions relating to the *claim*. One of the puzzles raised by them (Ints. 341-349) is upon the direction of the side lines from the River. The witness said they ran back in a northerly direction. He is mistaken in his cardinal points, but not in the main and only important fact, which is, that the side lines run back ten miles from the Columbia River, whether north or east is of no moment. A reference to the map of Clark county with the boundary of the claim marked upon it, produced by the claimants, marked "H" will at once show that no difficulty of that kind ought to have been raised.

There is an ambiguity or kind of play upon the word *claim*, which a moment of examination and thought will explain. *Claim* is used in different senses at different times. Generally, when used by Mr. Mactavish, in his answers, he means, as he himself declares, simply the use and occupation of the land in question, and he supposes the Company's claim consisted of what it so used and occupied—that is, it claimed to be maintained in all that it had in

possession in 1846. But as to a *claim*, in its closer and more technical sense, he personally knows nothing about it. It originated, and, as he believes on information from his predecessors, was defined long before he was in a position to know anything about it. He never made any such claim or gave any such definition ; personally he never knew whether any body else did. He always speaks of the matter at second hand as having heard of it from Sir James Douglas or Mr. Ogden, (second cross-examination p. 146, 147). But it is perfectly clear that he regarded it as one of those transactions which belonged to a past crisis and a period with which he had nothing to do. If there had been a claim and definition he could not change them ; if there had not, he had no authority to supply them.

A reference to his letter to Mr. Tilton containing the extract from Mr. Ballenden's letter, shows this conclusively. (See Cross-Int. 647 and following from p. 143 to p. 152). He finds a definition of limits and gives it for what it is worth, disclaiming at the same time all intention of defining the boundaries of the land claimed by the Company, and all authority for doing so. It was a perfectly safe and harmless way of dealing with the pressing demand of the Surveyor General for at least two reasons: 1st, it bound nobody ; and 2nd, very nearly all the land described in Mr. Ballenden's letter had then been taken possession of by the officers of the United States, or by American citizens, not less than eighty in number claiming under donation laws (See U. S. Doc. Ev. p. 232 and seq., Ebby's report ; also p. 266 Whitney's letter ; and evid. of Crate, p. 109, 110, 111). It was of no importance to the Company how much of the land of which they had been so expropriated might be surveyed, and quite idle to raise any question upon so barren a subject, and especially so when discussed with the Surveyor General. How idle it was, is proved by the fact that notwithstanding the description contained in Mr. Ballenden's letter, and in spite of the protests of Mr. Mactavish, the survey was carried over the land of the Company without the least regard to such description. (See official map marked H fyled by claimants, and official map no. 6, fyled by respondents.) In order not to divide this subject, I will here say a few words concerning Mr. Ballenden's letter which is produced in rebuttal under the designation F 3. (p. 435.)

Mr. Ballenden, it will be observed, succeeded Mr. Ogden at Vancouver. He came to Vancouver first in 1851, five years after the treaty. He seems to have been asked to define the limits and make a survey of what he considered to be the Hudson's Bay Company's possessory rights in so far as regards land on the Columbia River, and throughout the territory of Oregon, and his letter speaks for itself. "Any opinion of mine," he says, "or that of any other agent, would not be official until submitted to and approved of by the Governor and Committee of the Hudson's Bay Company in London," and he adds, "I do not think that any individual can state the nature or define the limits of the Company's claim in this territory. To the representatives of both Governments must the final decision be left." After these disclaimers he does not pretend to define the claim, but proceeds in cautious language to say: "There is, however, a certain tract of country in the neighborhood of Vancouver which was for a long period, (and if our rights were respected) still ought to be in the sole possession and occupation of the Hudson's Bay Company; within these limits I must respectfully request that no survey be made or claim granted to any person whatsoever without the approbation of the Hudson's Bay Company."

"That tract to which I refer commences at a stake and tree-marked on the north bank of the Columbia river, about two miles west of Willow Point; thence running northerly along the slough until it meets the outlet of the Lake River; thence following the meanders (easterly) of the said river, to the large lake (9½ miles), passing on the north bank, until it strikes a small stream entering the lake on the north-east side; thence running east 15° S. 6½ miles, to a stake marked between the third and fourth plains in a swamp; thence east 22° S. 4½ miles to the Camas Plains, to a stake marked; thence south 3½ miles, to the Columbia River; thence following the meanders of said river to the place of beginning. Also, one small island south of Vancouver, on the Columbia river."

From what source Mr. Ballenden framed this description, it is impossible now to ascertain. It seems to have been entirely a conception of his own, for there is no map, or note of survey in the possession of the Company, and no information is given by any wit-

ness on either side in relation to it. There are, however, several important facts in relation to it which are certain. 1st.—It was furnished by an officer who went to Vancouver only in 1851, five years after the treaty, and long after the Company's stock of cattle had for the most part disappeared. He could, therefore, have had no personal knowledge of the extent of the pasture range in 1846. 2nd.—His description does not, either in respect of extent or of boundary lines, correspond, in any degree, with that given by Sir James Douglas, and Mr. Ogden, and several other witnesses who were at Vancouver in and before the year of the treaty, and furnished by Mr. Ogden to General Smith in 1849, as proved by Gen. Ingalls, (U. S. Ev. Pt. 2, p. 2). 3rd.—The furnishing of that or any other definition, was contrary to direct instructions from the governing body of the Company.

But the paragraph of Mr. Ballenden's letter denying the right of any individual to define the claim of the Company, disposes in principle of the whole ground upon which the innumerable interrogatories relating to the claim and its definition, rest. Not only was there no authority in the officers of the Company to make any definite claim, but no proper occasion or opportunity arose for the Company to do so. In 1846, there was nobody disposed to dispute the possession. During the whole of the subsequent time there was a constant series of usurpations and aggressions, but nothing was done by the United States to invite the Hudson's Bay Company to present its claim with a precise definition of its nature and limits. Throughout the whole of that period, the rights of the Company were denied virtually, as they now are formally by the present defence. Local officers of the United States might have asked local officers of the Company how much land it claimed, but surely no man will maintain that any answer to such a demand, on the one hand, or any acquiescence in it, on the other, could have bound either principal party.

This was, in effect, the position taken by Mr. Ballenden, based upon special instructions from his superiors. Sir George Simpson, in a letter to Governor Stevens, of the 22nd March, 1854, (Doc. Ev. C 2b, p. 273) says: "I have already intimated that the Hudson's Bay and Puget Sound Company will recognize no definition or limitation of their treaty rights, except on the authority of the

“ parties to the treaty which created them ; and they have accordingly instructed their agents within the Washington Territory not to perform any act which can compromise them or affect the question of the extent or nature of their rights.”

The question was one arising upon treaty stipulations between two nations, and could be settled by the contracting parties alone, either by formal convention, or by referring it to a *quasi* judicial commission. When provision had been made for settling it in the latter mode, the claim, properly so called, was defined, and is to be found in the memorial which is before the present Commission.

This claim, I am satisfied, cannot be circumscribed by Mr. Balenden's letter. But even if it were, it would still include a tract of some 60,000 acres, (U. S. Doc. Ev., p. 276) which most of the witnesses for the claimants, and many of those for the respondents, testify to be of a value far exceeding the amount at which the land claim at Vancouver is stated in the memorial, and the motion in amendment.

The whole cross-examination upon that subject is, therefore, an ingenious piece of strategy to divert attention from the broad facts of the claim, but it is nothing more.

It will not escape the attention of the Commissioners, that there are numerous points in which Mr. Mactavish, in his cross-examination, has enlarged upon and confirmed his previous testimony. Thus his answers to Ints. 91 & 96, (p. 59-60), contain a history of the causes of the falling off of the trade imputable to the action of the U.S. His answer to 98 (p. 61), shows the impossibility and the uselessness of re-occupying Walla-Walla, Bois , and Fort Hall ; and his answers to Ints. 145, 146, and 147, which are to be coupled with 39 and 40, and also with 178 and 179, are important in explaining and confirming the previous estimates of the value of the buildings ; showing how superior they were in construction to those of the Military Post to which they are compared by General Ingalls. And the fact stated under Int. 168, that the women and children at Vancouver took refuge in the fort so late as 1856, is significant of the importance of the place.

The answers to Ints. 255, and following, to 261, relate to the causes for ceasing to use the saw mills, viz : that the land on which timber should have been cut to supply them was in the possession

of trespassers. The price of timber from 1846 to 1850 is stated under Cross-Ints. following, down to 266, showing that it was very costly. Cross-Ints. 379 and 483, (pp. 104, 119), bring out from the witness clear and detailed descriptions of the land at Vancouver which completely extinguish the attempts to confuse and mystify his knowledge of it by the devices of a subtle cross-examination. The evidence given under the interrogatories following 483, relating to the quality and value of different portions of the land is also very satisfactory.

I am not disposed to dwell further upon this extraordinary cross-examination. It may seem that some of the answers in it have been given impatiently and inconsiderately: and this is not to be wondered at when we remember that the witness was constrained and worried for a month and more by nearly 1000 questions put with signal adroitness by one counsel, who was the actual examiner, after being prepared in close and constant consultation with another, of whose acknowledged ability and great experience I need not speak. Few men subjected to such a process could wholly escape the perplexity and distraction which it was intended to produce; but notwithstanding this, the answers taken together are characterized by clearness and vigor, whenever they relate to anything of importance, and the cross-examination, as a whole, has added to the value of the former deposition, and to the solidity of the evidence in support of the claim.

I deem it my duty however, both to my clients and to the witness, not to pass unnoticed, the peculiar style and spirit of this cross-examination, which, I cannot but think, are at variance with what ought to have prevailed in dealing with a controversy like the present one. It seems to me to have been one of those efforts sometimes made by lawyers to weary and perplex the mind of a witness, so as to confound his knowledge and unsettle all truth. In some cases, and before some tribunals, this kind of procedure, even when grossly unfair and censurable, may succeed, but it is of little use before men who understand all about it and are accustomed to weigh evidence, and to distinguish truth from falsehood.

Another noticeable feature of the cross-examination is found in that portion of it which is devoted to a searching inquisition into the consultations and conversations between Mr. Mactavish and the

counsel for the claimants, and particularly into the reason why he was examined in Montreal. The questions alluded to, will be found under the numbers from 151 to 156, and again from 180 to 216, occupying the whole of some two days in the examination. They are of no importance in the cause; for the fact that Mr. Mactavish was the agent of the Company and had taken an active part in prosecuting its claim, was already proved in the former cross-examination, and in fact, freely admitted. It is difficult to say, therefore, why this long series of questions should have been introduced. The only conceivable object is to show that there was some artful and fraudulent contrivance between Mr. Mactavish and the counsel, for getting the former to swear to something which is not true, or to suppress something which is true. Whether there are any circumstances to justify this imputation, or whether the position and character of the men against whom it is directed, are such as to warrant its having been made, I leave, without comment, to the judgment of the Commissioners.

TESTIMONY FOR THE UNITED STATES

Having presented the more important portion of the claimants' evidence respecting Vancouver, which establishes a value very largely exceeding that put upon it in the memorial, I will now submit a brief review of the counter evidence taken by the U. S. applying to that post. I propose to follow the same course with all the depositions in which the testimony is confined to one post or one group of posts having some connection with each other. But when a deposition contains testimony relating to several posts unconnected with each other, or embraces general subjects of importance, I shall place the review of it after the statement of the claimant's evidence upon all the posts.

This arrangement will save repetition and give as much of order and simplicity as is attainable in a matter over-loaded, as this defence is, with a mass of incongruous testimony upon a great variety of subjects.

The observations already made upon the strength of national and personal feeling against the Company, are applicable to almost all the witnesses examined. The exceptions, which occur for the most part among the military men, will be acknowledged in the proper places.

The witnesses for the respondents amount in number to eighty, about five times the number examined for the claimants. The statements made by them must be classified under different heads. We have :—

1. Statements by a large number of them which in a greater or less degree confirm the evidence of the claimants. These statements being sometimes given in a spirit of fairness and in a direct manner, but more frequently drawn from unwilling lips by a searching cross-examination.

2. Statements unfavorable to the claim, and contradictory of the evidence in support of it. These are, for the most part, from witnesses manifestly hostile in feeling toward the Company, and particularly toward its present claim.

3. Statements on matters which are unimportant, or of which the witness really knows nothing, or so little as to render his testimony worthless.

I shall begin with the witnesses in whose depositions statements belonging to the first class are most numerous, although it is to be borne in mind that in nearly all the depositions, isolated statements falling within that class are to be found, either made inadvertently or forced out by Cross-examination.

INGALLS. (Pt. 1, p. 1.)—The first of the witnesses in whose depositions statements may be found which confirm the evidence of the claimants, is General Ingalls, an officer of high rank, who was stationed at Vancouver as Quarter Master from 1849 to 1852, and again from 1856 to 1866. This gentleman, as shewn by the evidence of the claimants, documentary as well as testimonial, was one of the earliest, most able and most absolute of all those who encroached upon and denied their rights. The letters fyled by the claimants (B 4 p. 332 to B 7, and B 11 p. 350 to B 13a, and B 17, 17a p. 363) show how sharp the discussion was between him and the agents of the Company. These antecedents have naturally had their effect upon his testimony, although it would be unjust to impute to him intentional unfairness or misrepresentation. The first statement by General Ingalls, to which I solicit attention, relates to the extent and limits of the Company's land claim at Vancouver. It is important, as great pains have been taken in the defence to create doubt and confusion upon this point. It shows conclusively that the claim was

then understood, as now defined in the memorial, and was insisted upon by the officers in charge in 1849. It was made the basis of a complaint, and of an application for protection from the Military Authorities. "It was," says the witness (p. 2), "a matter of complaint by Governor Ogden, Chief Factor of the Hudson's Bay Company, to General Smith, that his lands were being squatted upon by settlers, and in that way I came to know about their claims. The object was to get protection from the Military Authorities. From his representation, the Hudson's Bay Company claimed a region of country, embracing some twenty-five miles upon the Columbia River, beginning above what was known as the Hudson's Bay Company's Saw Mills, and extending down or nearly to the Cath-la-pood River, and some eight or ten miles inland." This description was given by Mr. Ogden officially, and is an answer to the allegations of Gibson and others, concerning expressions made by him to be hereafter noticed.

The death of Mr. Ogden gives peculiar weight and value to this testimony, which establishes two facts: 1st, the extent and limits of the claim in and before 1849, and 2nd, that the lands so claimed by the Company, were then squatted upon by U. S. Settlers. (p. 3, Int. 10). Even its enclosed lands, of which the witness says (Dep. 2nd, p. 526) that "during the earlier years 2,000 acres were under cultivation," "were gradually absorbed by increasing settlements until at last the occupation was reduced very nearly to the stockade, when the Company retired." And when he left, the lands claimed by the Company "were in occupation by the citizens of the U. S. and the military authorities."

It may, moreover, be remarked from the statement relating to Mr. Ogden, how much the difficulties of the Company, in establishing their claim, have been increased by the loss of his thorough personal knowledge of all the facts at the time of, and for several years before and after, the treaty.

General Ingalls says also, in his first deposition, (p. 7) of the value of a portion of the land: That in the town of Vancouver, in 1860, land was worth from "one hundred to one thousand dollars per acre." He purchased ten acres in 1860 for one thousand dollars, and sold it again for the same price. And this land, it is to be remarked, was not on the best part

of the town site, as he seems to think, nor in fact upon the town site at all, but a good deal below it. His evidence, (p. 14 Cross-Ints. 13, 14, 15, 16), concerning the overflow of the land at Vancouver, and stating that "the farming lands of the river banks are hardly ever overflowed more than twice in ten years, and that the effect is beneficial, as the sediment is of an alluvial character," is useful as being in contradiction of the flippant declarations of other witnesses, who had no knowledge which enabled them to form a true judgment on the subject.

For the statements relating to the buildings, reference must be had to both depositions, and they must be taken in connection with the Documentary Evidence (A6 & A7 p. 320, 321) by which it is established that some of those buildings were hired by the Military Authorities at a large rent, (\$70 a month), and that the witness personally leased one of the saw mills for the monthly rent of nearly \$1,200; and also with the answers (p. 9, Int. 35, of the claimants, 1st Dep.) relating to the high price of labor and timber in 1849; and (p. 12, 13 Cross-Int. 7), to the cost of officers quarters, built of logs, amounting to some \$7,000 or \$8,000 each.

Most, if not all, he says, of the buildings of the Company in his first deposition, refers to their condition in 1860 (p. 5). It is generally unfavorable, but not sufficiently precise to require a further separate notice. The observations upon the statements contained in the second deposition will apply to the whole subject. In this latter deposition he speaks more fully and positively of the buildings, and puts an estimate upon the post at Vancouver (p. 526), including in that term [see Cross-Int. 47, p. 536] "the chief factor's house, the bachelors' block for officers and clerks, the office, the storehouses, and the blacksmith's shop, surrounded by the stockade." He declares (p. 525) that he considered the military post there, which he estimates at \$50,000, was worth as much and had cost more than the H. B. Co.'s post, and further, that although he could not have built the Company's post there for \$50,000 in 1849, yet that he believes he could have done it for that, three years earlier or later, with the facilities existing at those periods. This is a mere conjecture upon a subject on which he had not hazarded an opinion in his first examination fourteen months

before. If he intended to indicate in his valuation of \$50,000 all the Company's buildings at Vancouver it is enormously erroneous. Apart from the valuations by the claimants' witnesses, the lowest of which exceeds it tenfold, it is \$25,000 less than the estimate given by the respondents' witness, Major McFeely, in 1853 (p. 120-123), and \$50,000 less than that given by Captain Howard in 1852-3, (p. 66). It is also in strong contrast with the estimate (p. 131-133) of his Chief, General Vinton, which will be more particularly noticed hereafter on p. 72. Indeed, I cannot reconcile General Ingalls' estimate with this official valuation, nor with the statement contained in his letter (Doc. Ev., B. 7, p. 342), that the military post at Vancouver cost \$150,000. But if he intended to make the cost of the military buildings a standard for the valuation of those only of the Company's buildings which were specified by him, and such, as appears from his answers to cross-interrogatories 47, 48 (p. 536) is really the case, a comparison must be presented of the true relative value of these two sets of buildings, founded as well on the mode of their construction as on their numbers and dimensions; and from such comparison it will be manifest that his evidence in this respect does not materially contradict that of the claimants.

As to the construction of the buildings, I refer, first, to his answer to cross-int. 5, p. 528, in which he describes the construction of the military buildings, and then to his answers to cross-interrogatories 40, 41, in which he describes the construction of the Company's storehouses inside the stockade. The former, with the exception of two houses, were one story high, built of logs not squared. The latter, of which he particularly describes one, was a large two-story frame building, filled in, in the Canadian rabbit style, with sawed plank, and straight-edged slabs, and floors of three-inch plank, building not battened. The frame was *very heavy*, built of fir timber and lumber, the shingles perhaps of cedar. The other storehouses were built in the same manner, except the main store, which was clap-boarded, and more expense put upon it (p. 535). This description is confirmed and completed by Mr. Mactavish in his 2nd cross-examination, (p. 81 and 82), by Mr. Lowe, (p. 33), and several other of the claimants' witnesses; by some of whom the superior construction of the dwellings is fully established.

The number and dimensions of the military buildings will be found in the cross-examination, (p. 531, 532). Those of the Company are specified in the list A, filed of record, and also in the depositions of several of the witnesses. Two of the storehouses mentioned by General Ingalls were 100 by 40 feet, and two others were of the same width, by 86 and 90 feet long respectively. The chief factor's house was 70 feet by 40, a substantial and thoroughly comfortable dwelling, as shewn by the concurrent testimony of a great number of witnesses. Of the other dwellings, consisting of what the witness terms the bachelors' row, one was 170 feet by 30, and two were 50 feet long by the respective widths of 30 and 25 feet. These, with the office, are all that are specified by him. Besides these, there were within the stockade at least 15 other buildings of similar construction, varying from 40 to 80 feet long, and of corresponding width, and a number of others of less dimensions. The storehouses alone were in fact equal in extent to all the military buildings in 1850; and, with the other buildings and the stockade (750 feet by 330, and 16 feet high), were together at least four times as extensive; while their construction, with the exception of the two houses for the commandant and the quarter-masters, was very much better and more costly than that of the military post. The cost of the house of the commandant was, from accidental circumstances, very low, \$4,500. General Ingalls states that otherwise it would have cost \$12,000. The other house cost \$7,500; and it is to be observed that, in the erection of the buildings, soldiers were employed at the rate of 25 cents per day, for laborers, and 50 cents for mechanics (p. 525 and 531). But, further, General Ingalls states that, at the time of which he speaks, 1850, "the H. B. Company's establishment, as to buildings, was more extensive probably than at any other time." All the buildings specified in the list A must therefore have been there, for the accuracy of that list at the time it was made admits of no question; and I request simply a comparison of the enumeration made by him, with the whole number of buildings specified in the list, those without as well as those within the Fort, and including the mills, farm-houses, and offices, in order to shew how small a portion was comprised in his valuation, and how inconsiderable the military buildings were in comparison with

those of the Company. His evidence on this matter, tested by analysis, shews a result not unsatisfactory to the claimants.

The only other portion of this testimony to which I would advert is that relating to the roads about Vancouver in 1846. He says, (p. 527): "The roads were very fair, a person could ride or drive "almost anywhere." And again (p. 538) he speaks of the roads as very good.

With regard to the other statements made by General Ingalls, many of them are avowedly speculative and conjectural—matters of opinion, not affirmations of fact. I am unwilling to speak otherwise than in terms of respect of the men of high rank and reputation who have become witnesses in this case, but I cannot avoid seeing that General Ingalls' second deposition partakes more of the spirit of the correspondence between Captain Ingalls and the officers of the Company, than it does of the moderate and impartial tone found in his first. Taking his whole testimony together however, I feel satisfied that it increases far more than it impairs the strength of the claimants' case.

GRANT. (Pt. 2, p. 16.)—General Grant was stationed at Vancouver for nearly a year, from September, 1852. His testimony is not of material importance. It is guarded and circumspect, and limited to statements based on his personal observation. He does not pretend to speak with the positiveness to be found in most of the witnesses, whose opportunity and ability for observing were infinitely less than his. I deem it necessary to notice only one or two points in his evidence. In speaking of the Buildings at Vancouver (p. 20, Int. 10), after premising that he cannot describe them very well, he says: "They were sufficient to accommodate "about 200 people, besides the large storehouses for selling goods, "storing provisions, Granaries, Saw and Grist mills," and then gives a pretty accurate account of the manner in which some of them were constructed, and adds: "The buildings looked as if they had "been in use for many years, but were still substantial and would "have answered for many years with ordinary repairs." He gives no estimate of their value or of the value of the land. In speaking of the overflow of a portion of the latter which he saw only once, he says (p. 21, Int. 4), for ordinary farming purposes, that over-

flowed and that not overflowed would have almost equal value in the hands of one owner. He hired a field of some forty acres from the Company which he declares to have been fertile and productive. I do not find in his deposition anything which on close consideration ought to affect, unfavorably, the claimants' case.

STEINBERGER. (Pt. 2, p. 50.)—Mr. Steinberger's evidence is of little importance, except upon one fact in relation to Vancouver, which is, that he owned there one half of ten acres of land, (p. 52), and sold it some time about 1860, for \$600, (Int. 6 p. 55). He thinks, but is not certain, that it was on the town site, but it is certain from his description (p. 65), that it was not on that site. This is another fact showing a value of the land at Vancouver higher than the estimate of it by the claimants. Apart from this, Mr. Steinberger's knowledge of the matters on which he is interrogated, is inconsiderable, and this he, by his answers, fairly acknowledges.

WAGNER. (Pt. 2, p. 58.)—The third deposition containing statements which are for the most part favorable to the claimants is that of Col. Wagner (p. 55 to 66). His knowledge of the buildings was very imperfect, as his answers in relation to them, particularly in cross-examination (p. 63, 64), shew. His estimate is consequently erroneous. Moreover, his valuation of them, at \$6,000 or \$8,000, is in August or September, 1861 (p. 60), some 16 or 18 months after they had been abandoned by the Company, and left to decay; and some of them had been torn down by soldiers (p. 64, 65). But his acquaintance with the land is more full and accurate, and his evidence is given with a frankness and intelligence which entitle it to respect. I commend the whole of it to careful consideration, but I cite only his answer to the 12th Int. (p. 62). "The lots in Vancouver in 1858," he says, "were sold, an ordinary building lot in the best locations in the town, as high as eight hundred dollars." "To my knowledge farming land in the immediate neighborhood of Fort Vancouver could be bought for forty dollars per acre, for the choicest improved land. Timber land, just below, and in rear southwest of the town of Vancouver, unimproved, was very cheap. I had a half section offered to me for one thousand dollars. The lots in Vancouver, I know, after the spring of 1859, decreased at least one third in value. I am not

"able to say with reference to the farming lands, whether they
"decreased or not."

This estimate, of \$800 per lot of which there were six in an acre—\$40 for farming land and \$3 for timber land, applied to the lands of the Company at Vancouver, gives an aggregate sum very much exceeding the value stated in the Memorial and motion.

HOWARD. (Pt. 2, p. 60.)—Captain Howard's estimate of the buildings in 1851, 2, and 3, is \$100,000; and this estimate, it is to be observed, was only of the structures within the fort, *not* including the valuable buildings, mills, or other improvements outside of it. His evidence is fairly given. (See Int. 4. p. 67, and Cross-Int. 6. p. 69), but the remainder of it is of little importance.

HARDIE. (Pt. 2, p. 107.)—The evidence of Gen. Hardie must be considered with reference, firstly to the Report of a military board of which he was a member, and secondly to the statements made by him on his personal knowledge. Of this, and other Reports of military boards, made from time to time concerning the buildings at Vancouver, I shall have something to say hereafter. It is evident that General Hardie remembers little or nothing about the buildings which were valued, and this he frankly admits. But their condition and treatment, after they were abandoned, is stated (p. 111), in his answer to the Cross Int. 11. His estimate of the value of the land is worth more, as it is given in distinct and precise terms and seemingly with an acquaintance with the subject, (p. 109, Cross Int. 6).

It is in the following language:

"I consider the United States military reservation to be the most
"valuable land in that region, excepting, of course, the town site
"of Vancouver. To the military reservation especial value would
"attach from the beauty of its site for handsome residences. I should
"think the flat alluvial sand outside this reservation, ought to have
"been worth one hundred dollars per acre. Upon the plateau behind it I should have hesitated to have given ten dollars per acre
"for any farming purposes," this is \$10 for timber land. "For
"purposes of timber, it would have value according to the quality
"of timber and its accessibility to the river."

MEEK. (Pt. 1, p. 62.)—The witness Meek went to Oregon in 1829, and was engaged in hunting and trapping there for

many years. His deposition is given in the bold and somewhat discursive spirit of a free trapper. His statements have a spirit of honesty in them, but they are vague; and his estimates have no foundation of knowledge or of close observation. This is manifest from his conjecture of the cost of the large buildings at Vancouver at £100 sterling, which is shewn by other testimony, and by his own cross-examination (p. 87), to be absurd; and which an easy calculation will shew to be less than one quarter of the cost of the timber alone. Most of his life was passed in his vocation in the wilderness, and his occasional visits to the posts were spent in debauch. He was at one of them, he thinks, three days, adding, "it generally took one day to get drunk and two to get sober." I do not believe that his answers can have any weight as evidence, certainly not, except as to facts necessarily falling within his personal observation and knowledge. Of this nature are the statements made by him in relation to the influence of the Company over the Indians, and the beneficial exercise of it (p. 71); the treatment of settlers by the Company, (p. 77 and 78); and the clear and positive account he gives, beginning with Cross-Int. 127, p. 87 and following to 93 of the unlimited possession, not only of the land claimed by the Company at Vancouver, but of all that country north of the Columbia river; of the large number of men employed; of its great agricultural operations and the excellence of the land; and of its extensive trade. To the Cross-Int. 143 (p. 90), whether he did not believe that if the Company had been protected in the use of its lands, it would have made very large profits between 1840 and 1860. He answers, "If they had full control of that country, as they had in 1840, they certainly would have made very large profits on their trade." Whatever there is to be found in his deposition having the character of reliable evidence, is favorable to the pretensions of the claimants.

CAMPBELL. (Pt. 1, p. 228.)—Mr. Campbell, who was a clerk in the employ of the Company in 1845 and 1846, gives evidence (p. 228), which is useful on two points;—first, the extent of the trade, and second, the aid extended by the Company to settlers. In 1845, a balance of \$40,000 was due from that class of persons, in the Willamette valley alone, and he says (Cross-Int. 7, p. 230),

if the Company had not been there he believes the safety of the settlers would have been very much endangered. The Company gave liberal credits to settlers on their arrival when they were without means to support themselves or their families. His testimony relating to the credits given by Dr. McLaughlin, is also valuable, as he was in a position to know, and did know, all about that matter. He says (p. 231), he never heard the Doctor say that the Company had charged any of those debts to him; and he, the witness, does not know that it did so.

A'HERN. (Pt. 1, p. 159.)—The testimony of Mr. A'Hern is of important value to the claimants. The witness is Clerk and County auditor of Clarke County. He proves, (p. 260), the assessment roll for the County, and the assessment of the Hudson's Bay Company, in 1858-9, (p. 261, Int. 12, 13), not including land; as he states in cross-examination, Int. 1, that real estate had been assessed for only four years, and he was examined in 1866. The uniform assessment of land, he says, is at \$1.25 the acre. He then describes the boundaries of Clarke County, and declares by his answer to the cross-int. 9, that from his knowledge of the value of property at Vancouver, as indicated by actual sales, he believes that the true value of land on the town site is greater than the whole amount of the county assessment, and that amount in 1866, was \$773,070. In the next answer, he states, that the land for five miles below that, and one mile back, sold for from \$4 to \$100 an acre, judging from the deeds recorded in his office. Here is testimony from a public officer, a witness for the Respondents, whose knowledge is derived from authentic and certain sources. His truthfulness or his judgment on the subject can scarcely be questioned, and yet he gives a statement which for six sections of land, (less than 4000 acres), shews a value nearly double the amount claimed for the whole.

I refrain from presenting this deposition further in detail; but the whole of it is worthy a careful consideration.

McFEELY. (Pt. 2, p. 118.)—The testimony of Major McFeely relates to Vancouver and Walla Walla. Much of it is of a loose character, resting upon imperfect observation and incorrect recollection. He was at Vancouver at different intervals from 1853 to 1860. His statement of the buildings on pp. 119 and 120 is

grossly defective. This is particularly shewn on p. 120, where he says that when he first arrived there in 1853, there was one old saw mill and, he thinks, a grist mill. Now the fact is beyond question that at that time there were two saw mills and one flour mill built before 1849, and one new mill finished by Crate in 1852, and a new flour mill. Three of these were running until 1856, when Taylor took violent possession of one of them, and one of them was still running in 1860 when the Company left.

I note this statement merely to shew how inaccurate it is; and yet it represents the character of the testimony of a large class of witnesses for the respondents who rarely state any fact with enough accuracy to make it safe evidence. This arises from want of knowledge, to which is added a bias, apparent in some shape or other, and in a greater or less degree in almost every deposition produced.

Major McFeely follows the beaten track of assertion, that the buildings were old and dilapidated, but admits (p. 123) that he had no occasion to examine them. He says there were one hundred acres of land enclosed near the Stockade when he first went to Vancouver, and he thinks the buildings and this land could not have been sold then for \$100,000 (p. 120). Afterwards in cross-examination (p. 123), he says he means that the valuation should be taken as of the time he last visited the place to the fall of 1860, and he applies \$75,000 as the value of the buildings, and \$25,000 as the value of 100 acres of land. With respect to the other lands claimed at Vancouver it is manifest that he knows nothing about their quality or value.

The striking part of this testimony in relation to Vancouver is, that it puts a valuation of \$25,000 upon 100 acres of land around the fort, or \$250 per acre, the same valuation put upon it by Mr. Mactavish, and a palpable exposure of the unfairness of the unscrupulous witnesses, Douthet, Applegate, Brooke, Ankeny, and Love to be hereafter noticed who have valued it at from \$8 to \$20.

Upon the whole, making allowance for the defects and proclivities which, from their peculiar position, must be expected in all the evidence brought against them, the claimants find in the testimony of this witness a good deal that strengthens and confirms their case.

The remainder of his evidence relates to Walla Walla and Bois .

It is not of much importance, and is given here in order not again to recur to his deposition. He saw Walla Walla twice in 1853 (p. 124) for a few days each time, and Boisé about as long (p. 127). He places the value of the buildings of the former at \$5,000 (p. 121), and of the latter at \$2,000 (p. 122), but it is obvious that his estimate of both places is a mere guess. He admits that his knowledge and recollection are indefinite and uncertain.

VINTON. (Pt. 2, p. 129.)—General Vinton's Deposition rests chiefly upon a report made by him in 1849, while Quarter Master at Vancouver, to General Smith then commanding there. It gives a detail of the principal buildings inside of the Stockade, and in more general terms of those without, and puts a value upon them of \$350,000 at that date. It is true he begins with a much smaller valuation, based upon a rate of \$2 per day for mechanics and \$1 for laborers and \$20 a thousand for lumber; but he shews no justification for assuming these prices, and we have from this report and from the evidence in connection with it, the substantial fact that in 1849 the buildings of the Company at the Fort merely, were worth \$350,000.

This estimate did not include the mills (four in number,) nor the farm buildings on the Lower Plain, on the Mill Plain, and on Sauviés Island. These, with the addition of the saw mill built by Crate in 1852, would make up an aggregate value of the buildings and improvements exceeding the estimate put upon them in the memorial. It will not, I apprehend, admit of doubt that any increased value of the property of the claimants, at any time and to whatever cause it may be ascribed, must accrue to their benefit.

SHERIDAN. (Pt. 2, p. 266.)—General Sheridan was examined by Interrogatories under a commission. He gives his impressions, but does not pretend to remember the number or dimensions of the buildings at Vancouver. As to the land, he says, in answer to the 11th cross-interrogatory: "and for the opposite reason which I have given for putting a very *light value* upon the structures of the Company, we might consider the lands occupied by them as increasing in value."

His deposition is of very little moment, and I suppose he was examined because of his high rank and deservedly great reputation.

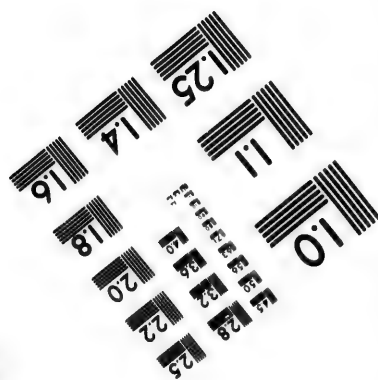
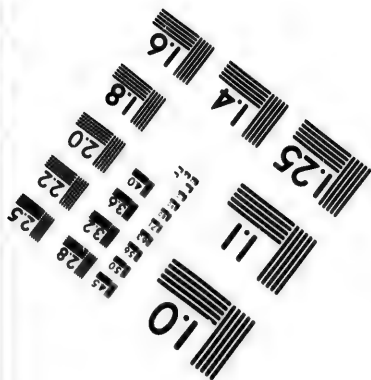
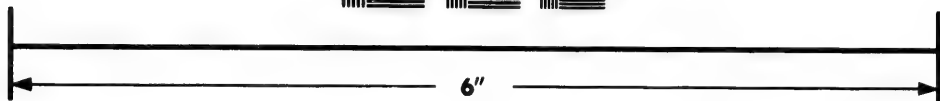
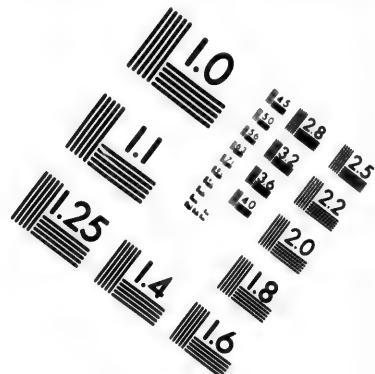
BELDEN. (Pt. 1, p. 398.)—George H. Belden, a civil engineer,

is examined to prove the best route for a railroad to be near Portland. But in so far as these various speculations on the subject are intelligible to one not familiar with the localities, it seems to me that he proves it on the contrary to be near Vancouver, (p. 391). The evidence is of little moment.

I have noticed separately the statements of these witnesses for the United States, as they are distinguished from the others by their generally impartial character. In all the instances in which they speak of facts within their personal knowledge, their testimony, in a greater or less degree, confirms that in support of the claim; in their conjectures, speculations and second hand information, they are frequently mistaken, but their answers are not those of men speaking under the conscious promptings of hostile feeling.

I must now solicit attention to statements by witnesses of a different disposition, to whom the claimants are certainly not indebted for any spirit of good faith or readiness to disclose facts favorable to them. On the contrary, whenever such facts have been stated, they have, in most instances, been wrung out by cross-examination, and are the more valuable from the difficulty with which they have been extracted.

BROOKE. (Pt. 1, p. 127.)—The statements, from witnesses of this description which I shall first notice, are those found in the deposition of Mr. Lloyd Brooke. He was a quarter master's clerk at Vancouver, under General (then Captain) Ingalls, and now resides in the rival town of Portland, where he has a very large interest in town lots (pp. 127, 156). His evidence is given in a manifestly hostile and unfair spirit. He ignores entirely any title in the Hudson's Bay Company, (see Cross-Ints. 127, 128 p. 147, also p. 152 Cross-Int. 158, and p. 157); and his general assertions are all unfavorable, while his special admissions, forced out by cross-examination, are the reverse. The first part of the deposition, from the beginning up to p. 129, relating to the buildings at Vancouver, is unimportant, as the witness admits he knows little or nothing of the subject. His answers on cross-examination, however, shew that their value must have been much greater than he, or most of the other witnesses for the United States, are willing to allow. These answers will be found on the pages numbered from 134 to 140. It will there be seen that lumber in 1849-50 was



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\$80 per thousand, and he admits that ten of the buildings were rented at from \$15 to \$25 each per month. This is far below the fact, as shewn by document A6, (p. 320), but the admission, which is dragged out with great difficulty, shews how unreliable the whole of his evidence on this point is. His answers also (p. 136) to Cross-Ints. 24 to 26, exhibit remarkable forgetfulness concerning a lease of the saw mill to Captain Ingalls, which he (Ingalls) sold to the witness. The rent under this lease was nearly \$1200 a month, as appears by the document itself, which is filed (A 7, p. 321); but strange to say, the witness cannot remember anything about the amount of the rent. The estimate put by him, in his examination in chief, upon the land at Vancouver, is chiefly noticeable for the contradiction it receives from the facts he is compelled to avow on cross-examination. This estimate will be found under the Ints. 19 and 20 (p. 131, 132). It puts the town site (640 acres) at \$20, and the military reserve, a part at government price—that is \$1.25,—and a part at \$10 per acre: the mill plain at \$1.25, the 2nd and 3rd plains, and two thirds of the 4th plain, at \$5; and the lower plain at \$20. It must be remarked, that in the answer to Int. 21, an interpolation of the words ‘as to’ has been made by one of the clerks in the printed copy, which destroys its meaning—an unauthorized and unjustifiable change of the record, other instances of which occurred before it attracted notice.

The town site and military reserve, with one or two of the adjoining sections, are, it will be remembered, the lands which have been declared by the witnesses for the claimants to be worth from \$500,000 to \$1,000,000, and variously estimated by the witnesses of the respondents at from \$100 per acre to \$800 per lot of six to the acre. In the face of this estimate of the witnesses, are the facts, that General Ingalls paid \$100 an acre (printed in this deposition, under the supervision of the clerk \$1.00) for ten acres near the town site, but not upon it, and sold it for the same price (p. 132, 144); that the witness himself (p. 144) sold one lot (the 6th part of an acre), with a house worth \$300 on it, for \$900, having rented it while in his possession for \$25 a month; that General Harney paid \$10 per acre for 100 acres, mostly timbered land lying on Nye’s section, that is, a mile distant from the town site (p. 145, 146); and that a sale was made between 1856 and 1860, of

land a mile and a half below Vancouver, for \$100 per acre (p. 151, Cross-Int. 153). In addition to all this, he acknowledges that the price of hay in 1849 and 1850, and subsequent years, was from \$15 to \$30 per ton; the Government purchasing annually 200 tons; and it is in evidence that much of the land of the Company would produce, at least, two tons per acre (Douthet, p. 252). His statement, (p. 131) of the cattle range from Lewes River (the Cathlapootl) to Washougal, covers the whole extent on the Columbia River claimed in the memorial, and agrees substantially with the testimony of Gen. Ingalls as to the description of the claim given by Mr. Ogden in 1849. These are all very important facts for the claimants, as they confirm the evidence of value adduced by them; and if applied with the witness' own general estimates to the other tracts of land of different qualities and value, would give a result larger than the amount claimed for them. Much inconsistency occurs throughout his evidence. For instance (p. 131), in answer to Int. 19, he says: "The town of Vancouver has always depended upon the size of the garrison," and (p. 152, Cross-Int. 158,) "that the growth of Vancouver was retarded, in the first place, by the large military reservation which was first declared there;" and he exposes the recklessness with which his sweeping and absolute estimates were made in his examination in chief (p. 131, 132), by giving the following answer to the Cross-Int. 179 (p. 155). "My opinion," says he, "of the value of the land is formed from ordinary observation while passing through the country and observing the difference in the appearance of the crops in different localities: *I have very little knowledge of farming, and don't know that I am a judge of soil.*"

I am not disposed to dwell further upon this deposition. The part the witness took, under the orders of his superiors, in the demolition of buildings and removal of enclosures belonging to the claimants, notwithstanding the protest and remonstrance of the latter, needs no special comment; and I am satisfied that a careful perusal of the cross-examination will lead to the conclusion, that, while the witness has failed in his evidence to aid the defence, he has unwillingly added materially to the strength of the claim.

ALVORD. (Pt. 2, p. 351.)—General Alvord seems to have been brought for the purpose of estimating the buildings at Vancouver.

He estimates the stockade and the buildings within the pickets, at \$25,000 (Int. 6, p. 351) in 1852; and in answer to the following interrogatory says, that in 1859 they were so much decayed that they were worth very little. But it is to be observed, that he is under the belief that the Company left in the summer of that year (Cross-Ints. 21, 22, p. 354 and 355), and it was after their abandonment that his second valuation was made. This error in the year shows two things; first, that the witness is inaccurate in his memory upon an important fact, and second, that his opinion of the buildings after the Company left, cannot be received as evidence of their value in 1859. Of the buildings outside of the Pickets he says nothing. The whole cross-examination shows that he really had no knowledge which would render his estimate reliable, and the answers to the Cross-Ints. from 14 to 17, show the conjectural and unsubstantial character of his valuation; he says something also about certain photographs of Vancouver which have been produced by the defence, but of these I shall speak in another place.

ANKENY. (Pt. 1 p. 40.)—The next witness of this class whose statements I shall notice is A. P. Ankenay; his testimony embraces the Posts of Vancouver and Walla Walla, Fort Hall, Bois , O'Kanagan, and Colville. I shall first advert to his evidence regarding Vancouver, to which the chief part of it relates. The utter thoughtlessness or dishonesty of his statements is manifested by his answers to Int. 33 (p. 45), and to Cross-Int. 71 and following (pp. 56, 57 and 58), relating to the value of the 640 acres of land including the Company's fort and the town site. This land, some of which was bought and sold by General Ingalls at \$100 the acre, and is declared by him to be worth from \$100 to \$1000 an acre; five acres of which Mr. Steinberger sold for \$600; some of the lots on which Colonel Wagner declares were sold in 1857, and 1858, for \$800 each, and that they have declined *one third* since; and of which Mr. A'Hern says that he believes the town site was alone worth the whole assessment of Clarke county, that is \$773,007,00; this land Mr. Ankennay declares to be worth \$20 per acre. It is true that he is driven from this statement in cross-examination, and compelled to modify it, and in answer to Cross-Int. 93 he declares he is not able to say that the town site was worth \$250,000, but he does not deny that

it was so. His ambiguous and evasive answers on that subject are significant of the character of all his evidence, relating either to Vancouver or any other of the Posts. His estimate of the rest of the land at from \$1.25 to \$10 is too vague to be of any service. If taken at the highest figure, or even one third of that amount, it would give as a result for the 160,000 acres, a much greater amount than has been demanded for it. But his statements on this or any other of the subjects on which he testifies, cannot be received as any guide for a safe decision.

With respect to the other posts of which he speaks, a few words will suffice. Of Fort Hall, which he first saw in 1849, and again in 1850, he says (p. 40, 41): The buildings "seemed to be comfortable," "the soil pretty good, in places better than the average in that country." "It gave evidence of a good deal of trade there." On cross-examination (p. 46) he acknowledges that "the whole face of the country up and down was good pasture land," and that the Company had a considerable stock when he was there.

Of Bois   he speaks unfavorably and incorrectly, valuing the buildings there at only \$2000 (p. 42).

Walla Walla he treats in the same manner, admitting, however, that the buildings were worth \$10,000 (p. 44). His cross-examination in relation to this Post (p. 53-4-5) shew how little he is to be relied upon.

His statements regarding Okanagan and Colville I leave without remark.

There is evidently a feeling of strong hostility in his mind against the H. B. Company, and especially against its present claim. — Whether it is strengthened by the fact that his interests are in the rival city of Portland, cannot be known, but certain it is that the whole of his evidence is colored by this feeling; the existence of which is shewn by the answers to the Cross-Ints. 75, 76, 77, (p. 56) and to Cross-Int. 105 (p. 60).

DOUTHET. (Pt. 1, p. 244.)—I next come to the deposition of Levi Douthet, which will require a few observations in order to expose the character of the evidence given by him. Douthet is one of the persons who have taken possession of sections of a mile square upon the land of the Company at Vancouver. He, of course, has no favorable feeling towards the claimants, or their present

claim, which he is interested in resisting. He is, moreover, a politician—having been a member of the Legislature, and is now an elected Probate Judge ; having risen to these offices from the humble beginnings of a mechanic. His evidence exhibits a series of contradictions and inconsistencies which compel one to believe that he is either a very dull witness or a very dishonest one ; indeed, it is difficult to avoid the conclusion that he has subjected himself to both these imputations. He worked between four and five months in the winter of 1853, under Crate, about the mills. His statements concerning them, and the buildings generally, are contradicted by those of Crate (pp.105-6), Mr. Mactavish, (p. 203) and of all the other witnesses of the claimants who have spoken on the subject. Some idea of his intelligence and honesty may be formed by his answer to the Cross-Int. (p. 250), as to the value of the water privilege on which the grist mill of the Company was. It is in these words : “ It would depend upon whether it was used or not ; if a man would use it, it would be worth something, if he don’t use it, it would be worth nothing.” His volunteer statement, founded on pretended rumor, that the windows and doors of the buildings were taken away by the Company, are certainly untrue, (Int. 17, p. 246 and p. 257). I shall notice his estimates of the land, chiefly in order to shew the spirit in which they were made, and the inconsistencies in which he has involved himself.

The estimates will be found on p. 247 and 248. 1940 acres, including the town site, the military reserves, and the sections occupied by Short and Ryan, he values at from \$10 to 15 per acre. In the face of this valuation, on being asked the basis of his estimate, (Cross-Int. 33, p. 252), he answers : “ My estimate is based “ upon sales of land that have heretofore been made, and other land “ that I have heard of having been offered for sale.” And on being pressed to specify such sales, the only instance he can give is that of land, sold by one Lawrence, as executor of Short, at an average of from \$30 to \$40 per acre, (p. 253). We may safely drop the \$30 and assume the \$40, as nearest to the true figure. This, evidently, was land of an inferior value and was “ unplatted town land.” Again, being driven to specific statements by Cross-Int. 40, and following (p. 253-4-5), he admits that the value of the town lots was \$30 per lot, and that there are eight lots in a block. This

gives, according to his own account, a result of \$180 per acre. This is less than one quarter of their true value, but it stands in sufficiently strong contrast with his estimate of \$10 or \$15 an acre. But it is to be further observed upon this estimate, that there are on the town site 108 entire blocks which, with those in the incomplete blocks, would give a total number of upwards of 970 lots,* and these lots at \$30 each would give, for less than 170 acres of the 1920, a sum exceeding the estimate of the witness for the whole. These 1920 acres at \$15 would give \$28,800, while 970 lots at \$30, would give \$29,100. I leave this fact for consideration without further comment upon it.

Apart from the town site and military reserve, a large portion of the land included in the 1920 acres now possessed by Ryan and others, is most valuable for agricultural purposes. The witness states (p. 252), that of Ryan's land alone, fifty acres will produce from two to three tons of hay per acre, and that hay for ten years past has been worth \$16 the ton at Vancouver. This gives something between \$30 and \$40, as the annual yield per acre of land which the witness values at \$10 or \$15.

I do not propose to follow the statements of Douthet any further in detail, but merely note his answers to Cross-Ints. 48,49 (p. 255), to indicate the mode and character of his estimates. I think the Commissioners will justify me in the conclusion that his evidence is thoroughly unreliable and dishonest.

BUCK. (Pt. 1, p. 209).—W. W. Buck is brought up for the purpose of giving evidence of the value of the buildings at Vancouver and at Champoege. In so far as his means of forming an opinion on these subjects are concerned, he certainly was not happily selected. He never lived at either place. He was never at Vancouver more than a night at a time from 1845 to 1850, and was only once there between 1850 and 1860, that once being in 1852. He was again there in the summer of 1860, after the Company had left. (See pp. 213, 214.) He speaks freely, and as depreciatingly as could be desired by the Respondents, of the buildings at Vancouver, but exposes, and indeed admits, (Int. 7, p. 210), that he was unacquainted with that style of building. He *guesses* the cost of the stores, 100 feet long by 40 wide, at \$1500 in 1846.

* Map I fyled by claimants.

These are the stores each of which is valued in the Report of the Military Board in 1854 (p. 105), at \$2,500, and is proved by the claimants' witnesses to be worth \$10,000. But not only is there this contradiction from without, the deposition contains in itself evidence that the estimate of this witness is not to be trusted. He hazards a conjecture (p. 215), that the upright posts in these large stores were eight feet apart, and (p. 216, Cross-Int. 33), he counts sixteen of them in the entire wall of 280 feet, which would be about half the actual number, and then explains his blunder by saying it was only a guess. This was true; but it is equally true that the whole of his testimony is a guess. On being urged with details upon the question of the cost of the building, he gives them (p. 216), and taking the price of lumber at one-half of what it was in 1849, and adding the items of roofing, shingles, nails and other materials, the amount of these alone would far exceed his estimate of \$1500, independently of any allowance for cost of labor. The recklessness and absurdity of such valuations shew that they could only be made by minds filled with prejudice and predetermined at all risks to defeat the just claim of the Company. His evidence (pp. 212, 217) concerning the buildings at Champoege, which, however, he estimates at \$3,000 in 1850, is worth little more than that relating to Vancouver.

LOVE. (Pt. 1, p. 235).—The witness Lewis Love, is not less hostile than the last in his testimony. He is the man mentioned in Crate's evidence (p. 111) as the successor of Taylor, in the unlawful possession of the saw mill of the Company, with the section of land on which it stands (p. 236). His interest is, therefore, direct in depreciating the value of the Company's property at Vancouver: and as he is a wrong doer usurping a portion of that property, he cannot be expected to view the claimants or their claim, otherwise than as an enemy of both. His deposition fully bears out the apprehensions which these influences suggest. It is a mixture of hardy assertion and self contradiction, exhibiting a strong desire to injure, which is baffled by the confusedness and incoherence of his statements. He came to Oregon in 1849, and resided for some years on the Columbia River opposite Vancouver. His statements relating to the buildings there, I shall leave without remark. They will be found in the examination in chief on p. 237

and in the cross-examination, p. 241, 242, and are of the same vague, loose character as are almost all the other depositions of the United States upon the same subject. As legal evidence, it is worth nothing. The estimates of the value of land it may be well to examine a little, in order to shew how irreconcilable they are with facts brought out by the cross-examination. He values the land on the Mill Plain at \$1.50, and that between the military reserve and the lower end of the lower plain at \$5 an acre. I notice these valuations, merely to refer to the answers given by the witness on p. 239. He there says: "I don't mean to say that the "land on the Mill Plain is only worth \$1.50 an acre." * * * "I think the land in the Prairie is worth \$5 an acre." And on being asked, how extensive the Mill Plain is, he answers, "about "three sections, or probably not so much, perhaps a little more. I "think that would include all the prairie land or about all."

It is curious, however, to observe that by this estimate and statement of quantity, the three sections of prairie at \$5 per acre, would amount to more than the estimate of the whole plain at \$1.50. This is a kind of test which, when applied to the estimates of the United States witnesses, almost invariably brings out a similar result, shewing how ill-considered and conjectural all these estimates are.

With respect to the lands below the Fort, valued at \$5 an acre, the witness (p. 239, Cross-Int. 14), declares that his reason for that estimate is, that it takes in a considerable quantity of swampy land and small lakes of no value, and he then admits (Cross-Int. 15) that excluding these, the value of that tract is from \$20 to \$25 per acre. Now, supposing the "considerable quantity" to be one-fourth or one-third, and it is nothing like that, there still would be an average value of at least \$15 an acre, instead of \$5. But portions of this tract of land have, in fact, been sold at \$100 an acre.

The military reserve he estimates (p. 237) at \$8. His reason for doing so, (cross-examination p. 240), shews the dishonesty of his testimony, and he is compelled to admit a value of \$50, the same, he says, as the town site; but he is also driven from this estimate, and is made to avow a knowledge of sales of town lots, of which there are eight in a block, for from \$30 to \$120 (p. 241), giving at an average of \$70 each, \$560 per block for that section

of land. I refer generally to the answers of the witness on the pages 240, 241, also to the answers to Cross-Int. 16 and Cross-Int. 27, which are directly contradictory of each other. The answer on p. 243, in relation to Ryan's and Nye's sections, exposes sufficiently his under-valuation of the land, lying above the Fort, at \$2 the acre ; and I offer no further comments on his evidence.

GENERAL PLEASANTON. (Pt. 2, p. 35).—This witness was the Officer in charge under General Harney, in 1860.

He was one of the immediate agents, under Gen. Harney, in driving the Company from Vancouver. His aggressive conduct has already appeared in the correspondence with Mr. Wark and Mr. Grahame, (Evidence of Hudson's Bay Company, p. 189. Doc. Ev. pp. 361-2-3-4-5.) as well as his impatience at the assertion, by the latter gentleman, of the rights of the Company. It was, of course, to be expected that when produced as a witness, General Pleasanton would sustain the policy in which he was so conspicuous an actor, and this expectation has not been dissatisfied. I do not propose to follow him in his deposition. It is given in a spirit of undisguised hostility, and is as unfavorable as he can make it. He values the buildings, at Vancouver, at \$10,000, but admits on cross-examination, (p. 140), that he means merely the materials, and all his statements are in a similar spirit. Apart from the evidence for the claimants, McFeely's valuation, at the same time, was \$75,000.

Gen. Pleasanton, and his chief Gen. Harney, were, probably the two most violently hostile of the Military men with whom the Hudson's Bay Company has had to deal. His answer to Int. 7, (p. 136) is, singularly disingenuous. He is asked,—“ Was this post vacated by the Hudson's Bay Company at the time “ you were there ? if yea, please to state, if you know, what was “ the cause of their vacating this post ? ” and he answers, “ They “ did vacate it nearly a year after the Charter, under which they “ held possessory rights, had expired. Their rights to remain there “ had expired, and they went away.” I refer to the correspondence relating to the compulsory abandonment of Vancouver, contained in the Documentary Evidence already cited, of all of which the witness must have been cognisant, and then leave to the Commissioners to determine the value of testimony in which such a statement appears as an assertion of fact.

There is one significant disclosure, in this deposition of a fact, which before appears in his letter to Mr. Wark, and which he endeavors, in vain, to neutralize or weaken. It is, that Gen. Harney, in the course adopted by him against the Company, was acting under instructions from Washington, (p. 141). I do not deem it necessary to dwell longer on this deposition.

REPORTS OF MILITARY BOARDS. (Pt. 2, p. 69 to 83, and p. 101).—An attempt has been made to make evidence of certain reports, some military and some civil, which have been put upon the record by the respondents. I notice here the reports by Military Boards as they relate to Vancouver alone. These Boards, which were three in number, were made up of Army Surgeons and Captains of Artillery, Dragoons, and Infantry, who may have been very intelligent gentlemen, but were not likely to know much about the matter committed to their judgment. Two of the reports were in 1860, by Boards appointed by General Harney. The first, in March of that year (p. 181), comprised only a few buildings on the Military Reserve, the same, it appears, which form the subject of the correspondence with General Harney, found in the letters included between the numbers B. 16, and B. 19, of the Documentary Evidence,—(p. 361 to 366.). The materials only were valued, and that for Military purposes, with a view to their immediate removal. The valuation was higher than could have been expected under the auspices and circumstances in which it was made: it amounted to the munificent sum of \$250.

The second valuation, (p. 65), which was similar in character, was in June of the same year, after the Company had abandoned Vancouver, and the aggregate of that estimate was \$915 for the materials. Upon these two valuations I remark:—1st, that valuations by Military Boards can never be received as evidence of value for other than military purposes;—2nd, that the report, not being under oath, is, of itself, no evidence;—3rd, that the Officers who made the report, from the evidence given by them under oath, manifestly, remember nothing about what they valued; for the simple reason, that they knew very little about the matter at the time. Hardie's Dep. p. 110; Smith's Dep. Cross-Int. 8, p. 84.

One of the members of the Board of June, 1860, Surgeon-Gen, real Barnes, thinks they had a carpenter with them. Another-

McKeever, (p. 80), seems to be pretty sure there was nobody besides the Board. They took some three hours to examine the buildings which they understood were to be removed; and they cannot, from personal recollection, say how many they examined, or whether the examination included all of the buildings of the Hudson's Bay Company at Vancouver, or not. As evidence of the real value of these buildings, as buildings, and not merely as materials for buildings, these reports and statements of the gentlemen by whom they were made, are really worth nothing. It is noticeable, that General Pleasanton, one of the most hostile of all the witnesses of the respondents, states, as we have just seen, that the materials of the buildings, were at the same time worth \$10,000.

The third report was of an earlier date—having been made in 1854, (p. 101). It is subject to the same general objections made to the others. The Board was appointed by Colonel Bonneville, after the correspondence with the officers of the Company, to be found in the Documentary Evidence (p. 327 to 331), in which they refuse to concur in the proceeding. The report, which gives a valuation of \$47,503, but does not, in fact, include all the buildings of the Company, (p. 105), stands by itself. The evidence of General Augur, (p. 101), the only member of the Board now living, simply proves it to be, as he believes, a copy of the original; therefore, there is no affirmation under oath, of the correctness of the valuation contained in it. It is merely the opinion of three unsworn men, and although good as an admission by the party producing it, of the condition and value of the buildings in 1854, so far as it goes, clearly cannot be received as evidence in any degree against the claimants.

These reports suggest an obvious remark, which is common to them all. They were themselves an illegality and a trespass on the claimants' right of property. The assumption of a power to value and then take possession, or rather, as the fact was, to take possession of, and then value the buildings of the Company, was, itself, a gross violation of its rights under the Treaty; and to commit this aggression and then produce the result as a defence against the claim of the party injured, is a proceeding, to say the least of it, remarkable for enterprise and novelty.

WILKES. (Pt. 2, p. 275.).— In reviewing the deposition of Ad-

miral Wilkes, I shall depart from my usual arrangement by separating certain portions of it which relate to different posts. He speaks of Vancouver, Fort George, Cape Disappointment, Chinook, Coweeman, Walla Walla, Colville and Umpqua, but by far the greatest and most important part of his testimony has relation to Vancouver. I therefore treat it here, reserving the statements regarding Walla Walla and Colville to be noticed in connection with those posts. The testimony of Admiral Wilkes all rests upon the knowledge acquired by him in his exploring expedition, of which an interesting narrative was published in 1845. All that he saw or knows of any of the posts of the Hudson's Bay Company is confined to the year 1841, and therefore, his testimony, although shewing in some degree the extent of the possessions and improvements at that time, cannot be received as fixing their extent or value in 1846. It is fortunate for the claimants that Admiral Wilkes had published his book, for in it we have at least an impartial if not a very complete account of the places visited by him, and his various statements made there, neutralize, in a great degree, those contained in his present deposition, which is in a less fair and friendly spirit. I propose in disposing of this deposition to do little more than contrast the discrepancy, sometimes in matter and sometimes in manner, between the statements made at the two different periods, and to leave to the Commissioners to draw their own inferences as to the strong bias and frequent inaccuracy apparent in the latter.

He first speaks of Astoria, (Fort George,) (p. 275-276) proving the possession by the Company there of some twenty or thirty acres of land, of which two were enclosed. His estimate of the value of this land and of the buildings at that time, affords no guide for their value in 1846 and 1850, when the United States authorities took possession of the place. His answers relating to Cape Disappointment, Chinook, Coweeman and Champoege, may be true for the time to which he refers, but they prove nothing which contradicts the evidence of the claimants or affects their claim. As already mentioned the most important part of his deposition relates to Vancouver. The extracts from his narrative given in the deposition require no observation in so far as they go, but there are certain passages which have been carefully omitted to which I request attention. On page 327 of his 4th volume he speaks of the post

at Vancouver in the following terms: "The Company's establishment
 "at Vancouver is upon an extensive scale, and is worthy of the vast
 "interest of which it is the centre. * * * Everything may be had
 "within the fort: they have an extensive apothecary's shop, a bak-
 "ery, blacksmiths and cooper's shops, trade offices for buying,
 "others for selling, others, again, for keeping accounts and transact-
 "ing business; shops for retail, where English manufactured articles
 "may be purchased at as low a price, if not cheaper than in the
 "United States, * * * in short every thing and of every kind
 "and description, including all sorts of groceries, at an advance of
 "eighty per cent on the London prime cost." * * * Of the quantity
 "on hand some idea may be formed from the fact that all the posts
 "west of the Rocky Mountains get their annual supplies from this
 "Depôt." On page 334 he says, "One afternoon, I rode with Mr.
 "Douglas to visit the dairy-farm which lies to the west of Vancou-
 "ver on the Collepuya (Cath-la-pootl); this was one of the most
 "beautiful rides I had yet taken, *through fine prairies* adorned
 "with large oaks, ash, and pine. The large herds of cattle feeding
 "and reposing under the trees, gave an air of civilization to the
 "scene, that is the only thing wanting in the other parts of
 "the territory. * * * The dairy is removed every year,
 "which is found advantageous to the ground, and affords the cattle
 "better pasturage. The stock on the Vancouver farm is about three
 "thousand head of cattle, two thousand five hundred sheep, and
 "about three hundred brood mares." Again on the same and fol-
 "lowing pages: "I saw two or three very fine bulls that had been
 "imported from England." The California breed of sheep, he
 "says, has been crossed with the Leicester, Bakewell, and other
 "breeds. The description, on the same page, of the site of the old
 "Fort Vancouver, and of the country around, is very striking. Fur-
 "ther down, in the description of the saw mill, the following passage
 "occurs: "In few buildings, indeed, can such materials be seen as
 "are here used." But this sentence has been cautiously excluded
 "from the deposition, although in the book it immediately follows
 "the words: "There are in it several runs of saws, and it is re-
 "markably well built." On page 336 he says: "From the mill
 "we crossed over to one of the sheep walks on the high prairie."
 "And again, "On our way back to Vancouver, we met droves of

"horses and cattle that they were driving to the upper prairie on account of the rise of the river, and the consequent flooding of the low grounds." The account of the produce of the land at Vancouver, (p. 333) beginning with "Mr. Douglass was kind enough to take me into the granary, which contained wheat, flour, barley, and buckwheat, &c." confirms the statement made by that gentleman in his evidence (p. 52) and shows that the farming carried on there was large and productive. Not only do these extracts from Admiral Wilkes' book, and other passages too long to transcribe, shew the extent and prosperous condition of the Company's operations at this Post, but they also confirm the claimants' evidence as to the area occupied by them. "The farm," he says, (p. 334) "is about nine miles square; on this they have two dairies, and milk upwards of one hundred cows. There are also two dairies on Wapauto Island on the Willamette, where they have one hundred and fifty cows." But Admiral Wilkes visited a dairy on the Cath-la-pootl on one side, and the saw mill on the other, and saw a sheep walk on the high prairie (which is the fourth plain) above the mill. He thus proves actual possession of the whole front claimed, and back, at least five miles. The whole of his statements of facts in connection with this post, found in his book are favorable, and I request a careful perusal of them as more to be relied upon than his deposition. In the latter he has taken upon himself to value the buildings at the Fort at \$50,000, (p. 250) and the other buildings, including the two mills, at sums amounting together to \$6,600. These valuations are not to be found in his book, and it is needless to say that they are unfair, and very distant from any approximation to the cost or value of the buildings at that time. It seems incredible that after the statement given in the Narrative, of the character and condition of the two mills, one should be valued at \$300 and the other at \$4,500. The buildings alone of these two mills, without any machinery, could not have been constructed for double these sums. I shall hereafter refer to answers of the witness to the cross interrogatories 15, 16, and 17 (p. 292,) on the subject of this valuation. With respect to the buildings at the Fort, they are undervalued in an equal proportion. But the whole of this valuation is worthless, not only because it is palpably unfair, but even if justly made, it could

afford no criterion of value for 1846, as in the interval between 1841 and that year, numerous and costly additions had been made; three new mills (Mactavish, 2nd Exn. p. 81-2; Crate, p. 105-6), and all the principal storehouses, (Lowe, p. 24; Mactavish, p. 52) with a great many other structures, having been built and the stockade renewed (Mactavish, p. 71) within those periods. The opinion in his deposition (p. 291), that at the time of building this fort, which was long anterior to 1841, all apprehension from attacks of the Indians had passed, is without foundation and abundantly contradicted by events long subsequent to that period. Even so late as 1856, women and children were actually received into the fort for protection.

As to his opinion of the value of the land, it is given at random, and is utterly inconsistent with the account contained in his book of the productiveness and favorable situation of the place for agricultural and grazing purposes. I refer to vol. 4, p. 327 and 333, already cited; and in vol. 5, p. 123, he says, "Vancouver exhibited the aspect of an extensive farming establishment, with its well-stored granaries, stacks of grain, &c., all shewed that the crops had been plentiful, and gave ample proof of the industry and success of agriculture."

The customary recital of conversations with the officers of the Company are to be found in the deposition. These imputed conversations cannot be received as establishing any facts adverse to the claimants. It is not unlikely that the gentlemen named, sometimes under depression of feeling arising from the unsettled state of the boundary question, and at other times actuated by a desire to discourage the influx of American traders and settlers, may have spoken despondingly and unfavorably of the business and prospects of the Company; but it is not to be believed that these expressions, whatever they may have been, can, after the lapse of five-and-twenty years, be detailed with sufficient correctness to form any legal or moral basis for judicial decision; no memory could be trusted to that extent, and certainly not one shewn to be so inaccurate as that of this witness. The whole substance of the statements relating to these conversations and to the decline of the fur trade, is contradicted by the evidence of Sir James Douglas, the only one living of those named in the deposition; and

by the trade returns and accounts of profit and loss which are of record. The speculations of the witness, (vol. 5, p. 137,) concerning the trade, simply shew that he was hazarding opinions upon a subject about which he really knew nothing.

I must not leave this book of Admiral Wilkes' without advertising to the testimony it contains on several other important points. Thus on p. 136, vol. 5, it states that "every facility has been at all times extended to new comers and settlers. It is sufficient that they are of good character, and the use of cattle, horses, farming utensils, and supplies, is invariably extended to facilitate their operations until such time as they are able to provide for themselves." The rule of the Company is spoken of as absolute over the whole territory, "and although despotic, not one instance of its abuse could be adduced." On p. 323, vol. 4, it is said: "The Hudson Bay Company's officers possess and exert a most salutary influence, endeavoring to preserve peace at all hazards. It is now quite safe for a man to pass in any direction through the part of the country where their posts are." On pages 332 and 333 of the same volume, is the following passage:—"The officers of the Company are exerting themselves to check vice and encourage morality and religion in a very marked manner. * * * I saw no instance in which vice was tolerated in any degree. I have, indeed, reason to believe from the discipline and example of the superiors, that the whole establishment is a pattern of good order and correct deportment." And following this, is the striking and important declaration, that, "*Wherever the operations of the Company extend, they have opened the way to future emigration, provided the means necessary for the success of emigrants, and rendered its (the country's) peaceful occupation an easy and cheap task.*"

It may be said of the whole tenor of the accounts given in Admiral Wilkes' Narrative, of the possessions, operations, policy and importance of the Hudson's Bay Company in Oregon, that they in no small degree, confirm the evidence of the claimants and strengthen their case. It was written in a genial, impartial and truthful spirit, which is not equally apparent in the deposition. In this latter, given under a consciousness that his statements were expected to influence the decision upon the present claim, he endeavors to

retract, interpret and weaken passages which are too conclusive to be so explained away, and in the course of this effort we find he has fallen into inconsistencies, or perhaps I should say, self-contradiction in his answers, some instances of which it is my duty to point out.

The witness began at once, on cross-examination, to exhibit the temper which characterizes his testimony and makes it to differ so much from the statements in his book. On being asked, Cross-Int. 3, how many sheds there were at Astoria, instead of answering, he demands the definition of a shed, although, as appears by the next Cross-Int. and answer, it was a term made use of by himself in describing Astoria.

The dogmatic character of his answers to Cross-Int. 7 (page 290), relating to the site of the light-house and fort at Cape Disappointment, and to Cross-Ints. 15, 16 and 17, relating to the construction and materials of the mills, is obvious. He says, "the mills could have been built without the aid of experienced or skilled workmen and millwrights," (which is utterly inconsistent with the account given in his book of the excellence of their construction) and that the man who superintended their building and their machinery, "might, in a few particulars, have given a more accurate statement of their cost" than he (the witness) could, "but not generally;" a pretension which is palpably absurd.

In answer to Cross-Int. 17, page 292, he denies the fact alleged in his book, that the saw-mill was remarkably well built, and that the materials used in it were of a superior quality, and when his statement there is so urged upon him, in Cross-Int. 18, that he cannot escape it, he says; "Yes, Sir, I have, I will add now that the buildings, themselves, have very little more to do with the mill than the watch-case has with the works," an answer characteristic of his whole evidence. He also volunteers the extraordinary assertion, that the presence of a blacksmith's shop at that locality was a proof that repairs were frequently required, and this, although he knew and had stated in his book, p. 386, vol. 4, that this shop was used for purposes of manufacture on a large scale. His answers to Cross-Int. 35, in which he qualifies the admission that he saw various kinds of grain at Vancouver, with the assertion that he does not know that they came from the farms, is in equally strange contrast

with his declaration already given from vol. 4, p. 333-4, and vol. 5, p. 123, (see p. 86-7-8 of this argument); and his positive statement in vol. 4, p. 335, that he saw two or three very fine imported bulls," is exchanged in answer to Cross-Int. 36, for the doubtful expression, "I think I saw one or two." His answers to the Cross-Ints. 38 and 39, betray the facility with which an imperfect memory, coupled with a strong bias, may lead into errors. The former of these Cross-Ints. is in the following terms: "Do you not consider the situation of Vancouver favorable for agricultural purposes, and have you not so stated?" In his answer he denies that he so considers it or has so stated, and on the question being put more in detail in Cross Int. 39, he repeats his denial, and adds: "On the contrary, I think I have given reasons why it is not so." This was so palpable, and if done consciously, so inexcusable a departure from the fact, that the examining Counsel left the matter there and passed to other topics.—Meanwhile, however, the memory of the witness seems to have been aided or refreshed, and he found it necessary to withdraw the answers given above. This was an awkward thing to do after having been so special, and he endeavors to cover the effect of his statement and misstatement, by saying, "I find, on examination, I made this statement, but it has reference to the mile square around Vancouver." Where he finds in his book this restriction to the mile square, in his account of the land and farms at Vancouver, it would puzzle him and anybody else to discover. The fact is, that these several answers and the manifest spirit in which they were given, destroy the value of the whole testimony. The last answer of the witness to which I shall allude, is on p. 301, in which he states that in a conversation had with Sir George Simpson before 1846, he estimated the property of the Hudson's Bay Company in Oregon at half a million of dollars, and that Sir George thought it ought to be a million. This conversation is of no importance in the present claim, but I would say in reference to it, that had the million, or even half million, been then paid, it would have been more beneficial to the claimants than the tardy and expensive recovery of the whole claim at this late day. The foregoing details of the cross-examination of Admiral Wilkes have been exposed, not because they are in themselves of much importance, but in order to shew, as I think they conclusively do, that the statements in his

Narrative are to be generally relied upon, while his testimony, whenever it goes to contradict or explain away those statements or to introduce facts not contained in them, is probably from failure or inaccuracy of memory coupled with an unfriendly temper, too often unreliable.

PEALE. (Pt. 2, p. 344.)—This witness accompanied Captain, now Admiral Wilkes in his exploring expedition in 1841. He speaks of Vancouver, Fort Disappointment, and Fort George, as he saw them in that year. His evidence is of no value in the present claim, as it refers to a period five years before the treaty. He puts a value of \$25,000 upon the buildings he saw at Vancouver in 1841, that is, \$25,000 less than his chief. They were evidently not of the same construction or in the same number as those included in the list A. made in 1846, and in fact, the most valuable of the buildings had been erected after 1841. It is evident also that the buildings he then saw at Fort George, and estimates at \$600, were not all the buildings which the Company had there in 1846. His estimates, therefore, at both places, are without application to the present claim. But his evidence, even if applicable in point of the time to which it is confined, would be useless from want of knowledge, of which he, like most of the witnesses of the United States, is shewn by the cross-examination to be entirely destitute. There is the usual statement of conversation with Dr. McLaughlin, to whom, in this instance, Sir James Douglas is added. These gentlemen gave the witness the impression that the fur trade was decreasing. I have only to repeat of all these alleged statements and impressions that if they were really made, as a matter of fact they were totally incorrect; as it is shewn by the extracts and accounts filed, that no such decrease occurred for nearly ten years later, and if in the course of conversation such impressions were conveyed, it undoubtedly was done in conformity with the general policy of the Company to discourage American traders from coming into the country.

The witnesses for the United States noticed in the foregoing observations, are all whose testimony is confined exclusively or chiefly to the Post of Vancouver. There are others whose depositions relate to that Post, but they apply also to other Posts, and will, therefore, under the arrangement already explained, be exa-

mined together hereafter. The chief of these are Nesmith, Gray, Thornton, Gilpin, Nelson, Applegate, with Rinearson and Carson his colleagues, and Gibbs, and perhaps one or two more of minor importance. They belong, for the most part, to the second class of witnesses—those whose statements are pointedly hostile and unfavorable; but even in their testimony, much will be found to confirm and aid the evidence for the claimants.

It is noticeable that notwithstanding the great number of persons, of all professions and from all quarters, induced by the respondents to testify concerning this post, of which for the most part they know little or nothing, not a resident in the town of Vancouver (except A'Hern) and not one of the occupants of the land within four miles of it is to be found among them. Love and Douthet are the only witnesses who are occupants of the land. They are both upwards of four miles distant from the town, and the latter is also three miles at least back from the river. This silence is significant; for Short, Ryan and Nye, or their representatives, who are in the immediate neighbourhood and hold the 1920 acres of land so often mentioned, and other occupants, at least, a score in number, must have more of the knowledge which would qualify them to disprove the value established by the claimants than any witness produced by the respondents. The actual condition of the town of Vancouver and the opinion and estimate of those resident in it are indicated in the numbers of the Vancouver Register produced, and of which extracts will be found in the documentary evidence of the claimants, (p. 488, 489, F 22, Nos. 13, 14).

CHAMPOEG.

The next post in the order of the Memorial is Champoeg, an outpost of Vancouver.

The amount at which the buildings and land at that establishment are estimated, is £3,000 sterling for the former, and £400 for the latter, making in all \$16,546.67. This appears, from the evidence, an over-estimate for the buildings and an under-estimate for the land. The evidence of Mr. Lowe (pp. 11, 12) proves the value of the buildings while in possession of the Company, as follows: Granary \$5,000, dwelling-house \$3,000, and out-buildings

\$1,000. He considers the land to have been worth \$10,000, and states that it could have been sold at that price until the year 1856. In 1861, after the Hudson Bay Company had been compelled to leave the country, an extraordinary flood swept away the buildings, and from that time the property became very much depreciated. The claimants, nevertheless, submit that they are entitled to recover the value of the property as it was in 1860; for if their rights had been respected, they might then have disposed of it for a sum greater than is now claimed. The evidence of Mr. Lowe (pp. 26, 27 and 28) and of Mr. McKinlay (pp. 91 and 96) is referred to. The latter witness says that "Dr. Newell, on whose land a part of the town site was, would have sold lots in 1861 from \$50 to \$100. His was the lower end of the town. The Company's property was in the upper end in much higher ground." These lots, twelve in number, as appears by the certificate of survey filed by the claimants, (Doc. Ev. F. 2, p. 433,) are declared on p. 96, to have been much more valuable than Dr. Newell's, from their being on higher land, and on account of the landing from steamboats being there. And he adds, the only landing at Champoeg during the winter is on the Company's lots.

TESTIMONY FOR THE UNITED STATES.

BUCK. (Pt. 1, p. 209)—LOVEJOY. (p. 18)—APPERSON. (p. 218)—BARLOW. (p. 223.) The testimony of Buck has been already reviewed, (p.). His valuation of the buildings is \$3,000. The depositions of the witnesses Lovejoy, Apperson and Barlow, relate to Champoeg only. I do not propose to enter upon any examination of them. Their estimates of the buildings vary from \$3,000 to \$4,000. The value of the land up to 1861 would seem, according to their estimates, to have been \$50 the acre, except the town lots, which were worth from \$50 to \$75 each. The buildings were washed away in 1861. The ground of claim for the value of them and of the land as it was in 1860, when the Company was driven to abandon Vancouver, and necessarily Champoeg, which was one of the outposts of that establishment, have been stated above. There is no other evidence of any importance given by these witnesses.

COWEEMAN.

The post called Coweeman, at the mouth of the Cowlitz River, is valued in the memorial at \$2,483.33. Sir J. Douglas (p. 53, 59) proves the existence of the buildings, as stated in list A; as does also Mr. McDonald in more general terms, (p. 154). Simons' evidence (p. 134) is more special, and he values the improvements at from \$3000 to \$4000. Mr. McTavish, however, states (p. 204) that the buildings were disposed of in 1857, but no land was conveyed.

HUNTINGTON. (Pt. 1, p. 395). I submit the testimony of the only witness for the United States on this post, H. D. Huntington, as to the sale of the buildings at this place in 1857 (p. 395-6). He is borne out in this statement by Dr. Tolmie, and it is undoubtedly true; but I find no confirmation of the sale of the land, and certainly no authority existed for any such sale, if any was really made, (Mactavish, p. 204). The matter, however, is not of sufficient importance to dwell upon.

FORT GEORGE.

As several of the witnesses for the United States testify concerning the posts of Fort George, Cape Disappointment, and Chinook, or Pillar Rock, together, it will be convenient first to state the evidence for the claimants concerning all these posts, and then to proceed to that for the respondents relating to them.

The evidence relating to Fort George, which is valued in the memorial at \$4,136.67, is found in the depositions of Sir James Douglas and Mr. Mactavish. The former (pp. 53 and 59) verifies the statement of improvements and the quantity of land as given in list A, and the latter (p. 205) declares the improvements to have been worth more than \$4,000 in 1850, when the place was taken by Major Hathaway for military purposes. This post was acquired by the North West Company from the Pacific Fur Company in 1813—transferred to the Hudson's Bay Company in 1821, and in 1850 taken by the United States as mentioned. The value of the place was certainly not less than the amount claimed for it, and Mr. Macintosh declares (p. 204) "that it must be much more valuable now than formerly, as there is quite a town at Astoria at present." And the same fact is apparent from the evidence for the respondents, particularly that of Grey and others.

CAPE DISAPPOINTMENT.

The post at Cape Disappointment consisted, according to the allegations of the memorial, of a dwelling-house and stores, of the value of £1,000 sterling, and a mile square of land valued at £2,000 sterling, making together \$14,600. This post was taken possession of by the United States military authorities in 1852. The description of it in the memorial is declared by Sir J. Douglas (p. 54) to be correct. The land claimed includes a mile square. He says (p. 59): "The buildings there were built by contract and carefully finished. They were commenced in the early part of 1846, and completed in 1848, and were quite new when given up by the Company." Mr. Mactavish says (p. 205): "Their value could not have been less than \$5,000." Of the land, he says (p. 230): "The land claimed was a mile square, 640 acres. There was little land for tillage there. The value of the land was in its location and suitableness for trade and business with the Indians, and for public purposes." And again (p. 205): "At the time of the treaty it was worth, for public purposes, from \$10,000 to \$20,000. Since 1846 the Cape has become much more valuable, as it is now many years since the United States took possession of it by building a lighthouse, and latterly by the erection of a military establishment, at an expense of not less than \$50,000." Mr. Tilton (p. 141) values the land at \$25,000, and considers it worth a great deal more to the Government. Mr. Giddings (p. 143) proves the designation on the maps, of the land claimed, and values it at \$40,000 for public purposes. The basis of valuation adopted by both these witnesses is a sound and just one—and the claimants have a right to recover the value which the land bore at the time of being taken by an authority they could not resist. There cannot, I think, be a reasonable question of the right of the Company to recover the whole amount claimed, as that amount is evidently far below the true value of the property.

CHINOOK.

The only evidence for the claimants relating to Chinook, or Pillar Rock, is that of Sir James Douglas, to be found on pp. 54 and 60 of his deposition. The amount claimed is \$1460. He proves no specific value of the building and the 30 acres of land mentioned by

him. Upon the whole, it is left to the Commissioners to assess it at such amount as they may deem reasonable. The witnesses for the respondents supply in some degree the want of a certain valuation. Taylor, as will be seen hereafter, admits in his deposition that the cost of the house there must have exceeded \$1000. And other witnesses put different valuations upon it.

TESTIMONY FOR THE UNITED STATES, RELATING TO FORT GEORGE,
CAPE DISAPPOINTMENT, AND CHINOOK.

SUMMERS. (Pt. 1, p. 192)—TAYLOR. (Pt. 1, p. 197.)—George Summers and James Taylor testify concerning Fort George (Astoria) and Cape Disappointment. The latter also speaks of Chinook, or Pillar Rock. Summers' evidence, which is given in a very uncertain manner, is of no importance in so far as it relates to Cape Disappointment. With respect to Fort George, he thinks the improvements there were not worth more than \$500 in 1846, and nothing in 1850 (pp. 193, 194). But his answers on cross-examination, show that his estimate is worthless. The land, he says, was worth \$100 an acre in 1846 and 1850, and \$1000 an acre at the time of his evidence (1866). And to the question, (p. 197,) whether the occupation by the military of Fort George, and the reservation of the adjoining land, did not depreciate the value of the land at the Fort and at Astoria in 1850, he answers in positive terms that it did.

Taylor estimates the buildings at Fort George at from \$500 to \$700: the land in 1846 and 1850, at from \$100 to \$150, and afterwards at \$1,000 per acre. Of the buildings at Cape Disappointment he knows nothing. It is, as he says, all guess-work (p. 199), as is, indeed, the greater portion of all the evidence of value for the defence. The value of the land he puts at the government price for agricultural purposes, and at \$5,000 for military and other public purposes; but he gives the significant fact (p. 202) that for one quarter section on Point Adams, immediately opposite, and less valuable for the same purposes, \$2,800 per acre were paid by the government. This rate, for the whole section at Cape Disappointment, would give a result of \$11,200. But the land there is, by the most competent judges, Tilton (p. 141), and Giddings (p. 143), estimated at \$25,000 and \$40,000. Taylor

speaks also of the buildings at Chinook ; although he saw it but once, never stopt there, and don't remember distinctly about it, he estimates again at a guess, \$100 (p. 199), and on cross-examination (p. 201) he thinks the cost of it may have been more than \$1,000. This witness, like all the others of the same class, gives, not facts, nor yet opinions founded upon certain knowledge, but conjectures, which are, of course, influenced by dislike of the Company and a desire to follow the current of popular feelings.

WELCH. (Pt. 1, p. 203).—Welch is a hostile witness. He was a trespasser on the Company's land at Fort George so early as 1845, and pulled down and sold the buildings on it to the last witness, Taylor. His unscrupulousness is made apparent by the cross-examination (pp. 206, 207). His valuation of the buildings at Fort George, is from \$500 to \$800 in 1846, and of the land immediately after the reservation was abandoned by the military in 1852, \$1,000 an acre. He also estimates the building at Chinook at \$300. The same remark, already made so frequently, of the absence of any foundation of accurate knowledge for their estimates, must be here repeated. The witness passed Chinook three times, but made little or no stop (p. 205) ; and I would also draw attention to the answers on cross-examination (p. 205), relating to the buildings at Fort George, and shewing by the detail that they are greatly undervalued.

DAVIDSON and HARRISON. (Pt. 2, p. 305, 312).—George Davidson and Alexander M. Harrison were both on the United States Coast Survey, and visited Cape Disappointment in 1851. They were never there at any other time, and have no information of a description which can render their estimates of value reliable.

Their evidence is not of sufficient consequence to call for any special notice.

SWAN. (Pt. 2, p. 372).—The deposition of this witness is only noticed to say that it relates to Astoria in 1852, and to Cape Disappointment in 1856, long after both these posts had been taken possession of by the United States. It is one of the numerous instances of the pertinacity with which this case has been encumbered and delayed by the multiplication of useless depositions.

McMURTRIE (Pt. 2, p. 371).—This deposition is of nearly the same

character as the last. Mr. McMurtrie was connected with the, Coast Survey in 1850, and visited Astoria and Cape Disappointment, saw a house there of one story high, built of logs, or hewn timber which he values at \$400. Saw also at Astoria a building said to belong to the Hudson's Bay Company, used as a storehouse, sixty feet long by thirty feet wide, built of squared timber, and several other houses, small frame houses and log-houses, occupied by persons said to be in the service of the Company. He admits on cross-examination, that he has no knowledge of the cost of putting up buildings.

GIBSON. (Pt. 2, p. 374).—Mr. Gibson was on the same survey, and saw Cape Disappointment at the same time. His evidence is of little consequence, but it affords another instance of the loose and unsubstantial character of the statements of these passing travellers in relation to the condition and value of the property concerning which they testify. He says the house at Cape Disappointment, which Mr. McMurtrie describes as a log house one storey high, was a frame house short two stories, or a storey and a half. He values it at \$500 (p. 376).

Both these witnesses prove the value of the situation for a light-house and fort. Gibson's answer to the 7th cross-int. (p. 377), on this subject, is decided and strong.

UMPQUA.

The Post at Umpqua was one of considerable importance. NICHOLSON describes it (p. 147). He says, "There was a stockade, I should judge, about 100 feet square, with bastions at two corners. There was a dwelling house occupied by Mr. Gagnier, other small houses, a store and storehouse, and a stable. There was a small house back of the stockade—there was quite an orchard there bearing fruit. The fort was in good condition and repair, and for the purposes of defence against the Indians was effective. There were small arms, but no heavy guns in the bastions. They had both cattle and horses at the establishment, and the range for pasture and such purposes was about a section of six hundred and forty acres of land. They had quite a large field under fence, but I cannot state the number of acres; part of this field was under cultivation; they had a garden there. It

"is the best claim, and best situated of any claim of like extent on the Umpqua River."

The value of the buildings there is stated at £3,000, and the land at £2,000. The evidence does not sustain the estimate of the buildings, which, moreover, were mostly destroyed by fire in 1854. Mr Nicholson (pp. 147, 148, and 150) estimates them at \$4,000 in 1851, and the land at \$8 an acre. Mr. McKinlay (pp. 78, 79) says, the farm was very large, and a fine piece of land level, and he considered it the finest in the Umpqua that he had seen. There were several houses, a barn and outbuildings, and he thinks half a section was under fence in 1854. Mr. Mac-tavish says (p. 205), that "the location is a very fine one, and the land claim there is one square mile in extent. The Company had also bands of horses and cattle there in 1846, and considerable farming went on at the place;" and he adds, "the parties who could have testified regarding Umpqua are all dead." In the absence of those men of whose evidence the claimants have been so deprived the best account of Umpqua is given in the deposition of W. W. Chapman, a witness for the respondents, from which it will be found that the claimants are entitled to receive from this post, including both lands and buildings, not less than \$10,000, or, if we take Mr. Gibbs' valuation of the buildings, hereafter noted, \$11,500.

TESTIMONY FOR THE UNITED STATES.

CHAPMAN. (Pt. 1, p. 10).—This witness knows the Post of Umpqua well, and is to be relied upon. His evidence relates solely to that post. It is given with great intelligence, and in a spirit of perfect fairness, rarely found in the witnesses for the United States. He was the lessee of the Company from 1853 to 1856. He puts little value upon the buildings, not more than \$500 or \$600 in all, estimating two of them at \$100 each, and the one built by himself during his lease at \$300 or \$400 (pp. 12, 13). The land he estimates at from \$10 to \$15 per acre (p. 14), and says, Int. 13: "The price which I have given is not so much from a recollection of the general price of lands in that country, as the particular value of this land, which I consider one of the best tracts of land in that country." This estimate of \$300 for the buildings

and \$15 per acre for one mile square, 640 acres of land, gives a total of \$10,200. I refer to this deposition generally as containing important evidence in support of the claim, both with respect to the ownership and the worth of the property. Umpqua was not re-occupied after the termination of Mr. Chapman's lease. The reasons are found in the evidence of Dr. Tolmie, pt. 1, p. 400, 401. On the latter page he says, "There were several reasons. "The Umpqua Indians were placed on a reservation, and were no longer free to hunt furs as formerly: and since Mr. Chapman, to whom the place was leased, gave up the Company's post there, "it has, I am informed, been occupied as a donation claim by an "American citizen."

GIBBS. (Pt. 1, p. 21).—In Mr A. C. Gibbs we have another political witness. Twice elected member of the Legislature of Oregon, prosecuting attorney, and now Governor (p. 21), it is quite conceivable that he sympathizes in the popular prejudice against the Company. And in his answer to Cross-Int. 43 (p. 31), he admits that in conversation he has spoken against the manner and amount of its present claim. I would not, however, be understood to impute to this witness any direct or intentional prevarication. It is simply that his opinions, warped by the influences around him, all take an unfavorable tone which is not borne out by facts. He describes the post, and says, "As I have understood the claim and lines, it was six hundred and forty acres, "about one-half first-rate prairie land, level, and the balance extending on a hill, a part of it timber." His statements concerning the buildings also are circumstantial, (p. 21.) His estimate of them is \$1,500 (p. 22), although he admits (p. 26), Cross-Int. 17, that they may have cost \$5,000. His valuation of the land at \$4.00 or \$5.00 the acre, which Chapman puts at \$10.00 to \$15.00, is more objectionable, and, indeed, is altogether erroneous and unfair. The instances of sale by which he seeks to justify it evidently afford no criterion of value. His own sale at \$250 was merely a sale of the improvements, with no title whatever, (see the answer on cross-examination, (pp. 24, 25). It is absurd to give it as indicating the value of land of which the fee-simple could be conveyed by valid title. The other instance given is that of a sale under execution, but of how much land does not appear. Mr. Gibbs fails entirely to

shew any ground for his low valuation of the land, and it is incontestible that his opinion on the subject is much less to be relied upon than that of Mr. Chapman. I leave the remainder of this evidence without remark.

DEADY. (Pt. 1, p. 107).—The witness, Mr. P. Deady, lives in Portland, and is a judge of the United States District Court for Oregon. He speaks to the value of Umpqua and of Vancouver. Of the latter place he, by his own admission, knows nothing (p. 109); and the confidence with which, notwithstanding his want of knowledge, he expresses a positive opinion on the value of the land there, indicates that little reliance is to be reposed in his other estimates. His estimate of the Company's land at Umpqua is from \$1.00 to \$4.00. This is so obviously absurd, when compared with the estimates of those having better opportunities of forming a sound opinion, that I forbear to remark upon it. I believe the witness to be one of the most resolutely hostile in his statements that have been produced for the defence; and I cannot account for the omission to subject him to cross-examination.

THOMPSON. (Pt. 2, p. 217).—Dr. Thompson speaks of Umpqua only. There is little to notice in his testimony. His estimate of a half section of land there is \$2,500, and his statements go to confirm the fact of the Company having had a large number of cattle at that post, and that they were killed by the settlers. The deposition is of little importance. It covers the time from 1852 to 1857, during a large portion of which Chapman was in possession as lessee of the Hudson's Bay Company.

These four are the only witnesses who speak of Umpqua exclusively. Of those who speak of it in connection with other posts, I shall notice here only the deposition of Mr. Gardner.

GARDNER. (Pt. 2, p. 320).—The evidence of the witness, Charles F. Gardner, applies not only to Umpqua, but also to the several posts of Coweeman, Colville, and Kootenais. That portion of it which relates to the two latter posts ought to be placed after the notice of the claimants' evidence regarding them, but the testimony is of little importance, indeed of none in so far as it relates to Colville, and it is therefore more convenient to dispose of the deposition here. The statements of the witness are not unfavorable to the claimants, but, in one or two particulars,

confirmatory of their evidence. His testimony concerning Coweeman shews that the Company was in possession of that place in or after 1853 (p. 325-6). Of Umpqua he speaks in 1854, when Chapman was in possession under a lease from the Company. The fort and buildings formerly there had been burned before that time, and the only buildings were a house occupied by Mr. Chapman, and another house and a barn. Of the land, the witness, a surveyor and civil engineer, who was employed in the survey of the N. W. boundary, says it is "first-rate" (p. 322), "is first-class" (p. 324), by which he means (p. 324), "the best and richest land he surveyed."

At Kootenais he saw in 1860, while in the boundary survey, only a log house and a shed. He thinks that more than forty acres of land had been cultivated. The land was good (p. 322-3); he saw no Catholic mission-house there.

His description of Colville is too imperfect to be of any value.

Of the remaining witnesses whose testimony embraces Umpqua, three, Huntington, Terry, and Dowell, will be noticed after presenting the claimant's evidence in relation to the three posts of Walla Walla, Fort Hall, and Fort Boisé. The others are Nelson, Applegate, with his colleagues, and Gibbs. Their depositions will be treated at the close of the claimant's evidence on the second proposition.

WALLA WALLA.

The Post of Nez-Percés, or Walla Walla, now called Wallula, was one of great importance. The evidence relating to it is pointed and strong, and shows a value beyond the estimate of \$81,273.33, made in the memorial. Of this estimate, £3,200 are for the buildings, and the remainder for the land, including a landing place and farm, and pasturage proved to consist of many hundreds of thousands of acres.

The witnesses of the claimants speaking of the value of this Post, are seven in number, viz: Messrs. Lowe, McArthur, McKinley, Anderson, Giddings, McDonald, and Walker. Mr. Mactavish and Mr. Smith speak of it in more general terms.

LOWE. (p. 12.)—Mr. Lowe proves the correctness of the details of buildings in document A. He knows it is correct, as he wrote

the measurements in April, 1847, and he says: "The thirty acres of cultivated land mentioned in the list was merely what was under fence at that time, and formed but a small portion of the farm." With respect to the importance of the establishment, and the cost and value and buildings, he gives the following answers to the 25th and 26th Interrogatories:

"Fort Nez-Percés was situated among tribes of very dangerous Indians, and many men were required for the defence while the fort was being built; it is only, therefore, with this fact in consideration, that I could base any estimate of cost. I should think that the buildings, walls, and bastions might have cost fifty thousand dollars, and the value of the fort was in its being a defence against hostile Indians, and a safe place of deposit for goods; it was a depot for the supply of the Snake Country and Colville, and the place where horses were traded for the interior brigades. It was a place for trading horses; sometimes there would be large bands collected, until an opportunity occurred to send them to places for which they were intended. Thus a large range was required for their pasturage."

McKINLEY. (p. 72.)—The most particular and complete account of Walla Walla is given (pp. 73, 74, 75), by Mr. McKinley, who was in charge of the place from 1841 to 1846, and who rebuilt the Fort, the old one having been burned. The portions of his deposition, comprised in those pages, explain its situation, extent, importance, and value, up to the time of the Treaty.

"It is situated," he says, (in answer to the 4th Interrogatory, p. 73), "on the south bank of the Columbia River; it was built of adobe; it was a walled bastioned fort, the wall was about twelve feet high; strong heavy gates; two brass four pounder cannon were mounted in the bastions, and also one iron four pounder, and one mortar to throw shell; there were also eight or ten blunderbusses mounted on swivels: there was a dwelling-house occupied by the person in charge, a range of stores, a range of dwelling-houses forming three sides of a square inside the fort, another range of stores back of the dwelling-house inside of the fort. There was a wing to the main dwelling-house, built afterwards, and some small buildings, including a powder magazine. Outside, there were a horse park, stables, cow-house, root-

"house, and a small pig-house. All the houses and the walls of the fort had stone foundations, except a range of houses occupied by servants. The fort and surrounding buildings occupied from two hundred and fifty to three hundred yards square, extending to the river at highwater. At low water the river would be one hundred and fifty feet from the front of the stores."

He proves the correctness of the inventory of buildings at the Fort mentioned in document A, with some unimportant exceptions, and says: "At the farm, when I left, there were no buildings. I commenced and cultivated the farm while I was there; I suppose I had enclosed and cultivated some twenty-five or thirty acres. This farm was about fifteen miles from the fort, on a branch of the Walla Walla River. Near the fort was a place called the garden, containing six acres, on the Walla Walla River, from a mile and a half to a mile and three quarters from the fort. Another of four acres, about the same distance from the fort. There were two more patches containing from seven to eight acres, from four to six miles from the fort." This statement of the positions of the several pieces of land cultivated by the Company, at wide distances from each other, is important as showing that the whole tract was really occupied by them; their discretion being exercised in selecting certain portions of it for cultivation, and leaving other portions for pasturage and cattle ranges.

The mere fact of this undisturbed occupation and selection in 1846, is sufficient proof of the possessory right of the claimants in this tract of country; for what stronger evidence of possession could be afforded than the selection at will over its whole extent of portions here and there, and the appropriation of them, as convenience suggested, to a particular use. As to the largeness of the range occupied by the Company for the pasturage of its cattle and horses, the witness says, in answer to the 6th Interrogatory, page 74: "This range would be included between the mouths of the Snake and Umatilla Rivers along the Columbia, about twenty-eight or thirty miles, and back to the base of the Blue Mountains, about thirty miles in a straight line. The horses sometimes went up on the side of the mountains, the portion of the country between the Walla Walla and the Snake. The horses and stock could not stay long, on account of the want of water; much of this country

"was sand and sage; portions of the valleys of these rivers were "very good land." With respect to the cost of the buildings, it is evident it must have been great; for the fact stated in answer to the 7th Interrogatory, that the wood used, was, in part, brought from the Blue Mountains, forty miles distant; was whip-sawed, and, in part, was cut by a saw mill one hundred miles off. The great importance of the Post is explained at length in answer to the 9th Interrogatory, p. 75. And the witness adds: "I considered it myself, in reference to the trade of the Company, the "most important post and key to the fur trade of the Interior." On p. 85 he states that he was at Walla Walla in October, 1855, and the Fort was in the same repair as in 1846, but some additions had been made to it. The Fort was abandoned in that year, (1855) by order of an officer of the United States. The annual profits of the place, in 1846, were ten thousand dollars, and witness thinks it would not be less in 1855. On pp. 86 and 87, under cross-examination, he confirms the statements made by him, and on page 95 declares his belief that at the the time of his examination, in 1865, the value of Walla Walla would have very much increased had the possessory rights of the Company to the lands held by them in 1846, been respected, and their possession left undisturbed.

He is asked by the 14th Interrogatory, page 98, whether it would not have cost an outlay of at least \$100,000 to bring labor and provisions before beginning to build at all at Walla Walla, and certain other posts named, and his answer presents, in a striking manner, the difficulty and expense which the claimants have to meet. It applies not only to Walla Walla, but also to the posts of Colville, Okanagan, Boisé, and Fort Hall, and should be borne in mind when the evidence relating to these places is under consideration. He says :—

"If you mean to ask me what it would have cost before the Hudson's Bay Company had tamed the Indians in the vicinity of these "posts, I would say that, to have brought men and provisions to those, "places, from any country where they could have been obtained, "protected them while coming, and when there, and before the "buildings were erected, would have required an outlay of capital, "in the mere organizing the party, and obtaining the necessary "numbers and supplies, greater than the sum named. The outlay

“ would not be so great to the Hudson’s Bay Company, on account
 “ of their gradual approach to this country, through tribes of Indians
 “ made friendly by contact with them ; at the same time the Com-
 “ pany was exposed to great trouble, danger and expense. An
 “ outlay of this kind would have to be considered as part of the
 “ cost of building.”

It is impossible, after the full and intelligent evidence of this witness, who knows all about the subject of which he speaks, and is beyond any suspicion of dishonesty, to doubt the general importance and value of this post. But the evidence of other witnesses is not less pointed as to its value.

McARTHUR. (p. 61.)—Mr. McArthur after proving the correctness of the enumeration of the buildings in Document A, as they were in 1848, and the space occupied by them, viz. : about 200 yards square (p. 62), proceeds to state the extent of land in the possession and use of the Company. He says, in answer to Int. 7th, that including the grave yard, the lands occupied by the Fort and buildings would cover about three-quarters of a mile along the river, and a quarter of a mile broad ; and, in answer to the Interrogatories 8th and 9th, that “ about a mile back of
 “ the fort, on the Walla Walla river, there was a place called a
 “ garden, containing about thirty acres under fence, and cultivated,
 “ to the best of my judgment. There was another farm some
 “ twenty miles off on a creek running into the Walla Walla. Here
 “ there was about forty acres that had been cultivated. That year
 “ there were thirty acres under fence, and fifteen in crop ;” and that the land about the Fort Walla Walla, used and occupied for the pasturage of the Company’s horses and cattle, was a range from the mouth of Snake River, down the Columbia to the Umatilla river, and about thirty miles back towards the Blue Mountains. An extent also of ten or twelve miles of the river front was occupied and used for the collection of drift wood—an object of great importance in that locality.

The value of the Fort and improvements, he declares (p. 63-67) to have been in those days (1848 and 1849), \$100,000 : and he states on cross-examination (p. 68) that if the Company had it at the time of the examination (1865) it would probably be of greater value than ever, if they were doing business there. In 1857 he

found the place in the occupation of the United States Government, which had soldiers there, and it was used as a landing place for Government stores (p. 63).

ANDERSON. (p. 125.)—Mr. William Anderson was at the Fort in 1857 and 1858. It was then in the possession of the United States, and occupied by soldiers (p. 126), who would not permit civilians to stop there.

He says (p. 127), "We always used to consider the half mile square, which would be a one hundred and sixty acre claim, would be worth from forty to fifty thousand dollars." The expensiveness of buildings is made manifest by his answer to the 3rd Interrogatory. "*I used lumber*," he says, "brought up from the Des Chutes. The Transportation Company brought it up for me at half price. It cost me \$100.00 per thousand. The Boat Transportation Company would deliver lumber then for \$200.00 per thousand; but they did not like to do it, as it interfered with their freight, for which they received \$80 per ton."

GIDDINGS. (p. 141.)—Mr. Giddings, acting Surveyor General of Washington Territory, estimates the site of a mile square in 1862, at \$40,000, and declares arable lands in the Walla Walla valley worth from ten to fifteen dollars an acre, and the pasture lands within two miles of the river, at a dollar and a quarter.

MCDONALD. (p. 150.)—Mr. McDonald (p. 155) says the pasture land at this post is chiefly rich bunch grass on its hills and prairies, and on its streams a deep alluvial soil. He values the pasture land at \$2 per acre, and the bottom lands at from \$20 to \$30 per acre, and the strip of sage and sand at 50 cents. This was in 1846, and he answers to the 22nd Interrogatory, as to the value he would place upon them at the time of the examination in 1865:—

"Great changes have taken place there since 1846, on account of the newly-developed mines of the Rocky Mountains, British Columbia and Oregon. Its landing site should be as valuable now as any other in Washington Territory or in Oregon; and the country back of it is being densely settled up, with a garrison and town near by. I will not place a value on the arable and pasture lands, as they are daily enhanced." The extent of the strip of land is described in the answers to the 20th Interrogatory, and the 10th Cross-Interrogatory (p. 163).

SMITH. (p. 240).—Mr. Smith, who in 1861 was, as has been already mentioned, registrar of the Land Office for Washington territory, an United States office, surveyed for the Surveyor-General of the United States the township in which the fort and landing of Walla-Walla, and the country around it, are included, states in general terms (p. 242), that the land was not suitable for farming, except immediately along the banks of streams, “along the Touchet and Walla Walla, and their branches, there were good farming lands—off the streams the land was sandy, and covered with a grass called bunch grass, which is excellent food for cattle.”

WALKER. (p. 257).—Mr. Walker, who for a long series of years held in Washington Territory many high and important situations, among others that of auditor of the territory, from whose office all assessments proceed, says (p. 260), that Wallula, the present name of Walla Walla, “is one of the main landings on the Columbia river, from which freight and passengers leave for the mining regions of Eastern Oregon and Idaho, and is the head of navigation at low stages of water in the Columbia river for steamers,” and states (p. 261) his belief that the town site, including the site of the old fort, with a mile square, is worth \$50,000.

FARRAR. (p. 248).—Mr. Farrar says of Wallula (p. 252), “It is the natural and proper landing-place for steamboats on the Upper River throughout a great portion of the year. At that point was situated the Hudson’s Bay Company’s old fort, Walla Walla. It is the river point for trade and commerce for that whole section of country on the Walla Walla valley.”

MACTAVISH. (p. 197).—The evidence of Mr. Mactavish, with one exception the only remaining witness who speaks of this post, is of a general nature. He was there in 1840, 1844, and 1845. “The place,” he says, “was first occupied by the North-West Company in 1818, and transferred to the Hudson’s Bay Company in 1821. It was abandoned by the claimants in October, 1855, during the Indian war, by order of Nathan Olney, Indian agent in that section of country.” By the abandonment a great deal of property was lost, of which a statement made by James Sinclair, and sworn to before a judge of Washington Territory, is filed under the number eleven in list C. The amount of property thus aban-

doned was of the value of \$37,000 in goods, and \$30,000 in the buildings and improvements; add to this \$1,100 worth of ammunition thrown into the river by the Indian agent, and a value is shewn at the post of upwards of \$68,000, exclusive of the land. This statement, which is proved by William Charles, then in the service of the Company, and who had been brought down from Boisé, of which he was in charge, to Walla Walla, is of great importance, as shewing the quantity of merchandize then at the fort, and the value put at that time upon the buildings. Mr. Mactavish estimates the annual loss caused to the Company by the forced abandonment of Walla Walla in 1855, at from \$10,000 to \$15,000 (p. 222).

The evidence of Mr. Sinclair, the superintendent of this post, is lost by his death, and is only one of the very numerous instances in which the Company has thus been deprived of evidence of the highest character.

It is undeniable that all this evidence establishes a value of the possessions of the claimants at Walla Walla very far exceeding the amount claimed in the memorial, and it is believed that nothing less than the whole of that amount, viz., \$81,273, ought to be awarded. The circumstances under which the place was necessarily abandoned in 1855, and the impracticability of re-occupying it, will be adverted to hereafter.

TESTIMONY FOR THE UNITED STATES.

The testimony for the respondents in relation to Walla Walla must be divided. The statements of Admiral Wilkes, and of the witnesses, Huntington, Terry, and Shoemaker, who speak of it alone, or in connection with posts already disposed of, will be noticed here.

WILKES. (p. 283).—The evidence of Admiral Wilkes concerning this post it will not be necessary to dwell upon. In addition to the extracts found in the deposition (pp. 283-4), I refer to his narrative vol. 4, p. 393, in which the pastures of the Company for their horses are noticed, in the ride of 20 miles from that place to Whitman's mission, and also the fertility of the country within a half mile of the Walla Walla river. The existence of a farm of 50 acres three miles from Walla Walla fort, is mentioned on p. 467.

HUNTINGTON. (Pt. 2, p. 145.)—This witness speaks of Umpqua and Walla Walla. He denies that he has any interest in the case, by which, I suppose, he intends pecuniary interest. The interest of strong feeling he certainly has and exhibits in his manner of answering on cross-examination, particularly on p. 155, and in the whole of his cross-examination, relating to Walla Walla. His residence in Oregon since 1849, and his several offices of County Clerk of Umpqua County, Member of the Legislature, and Superintendent of Indian affairs, are sufficiently indicative of the kind of testimony which might be expected from him. He estimates the cost of the buildings at Umpqua at \$1000 (p. 148), and states that they were burned in 1853 or 1854, after they had been leased to Chapman. This is a palpable misstatement, as is shewn by Chapman's evidence. In 1850, there were, in his opinion, from 100 to 150 acres of land under cultivation. (p. 147.) His valuation of it, if any certain valuation can be found in his evasive answers on p. 155, is in gross contradiction with that of Chapman, and of other witnesses for the defence. He admits the trade in sea-otter skins, which were worth \$80 each in Portland. The witness first saw Walla Walla in 1862. His testimony, therefore, in relation to the buildings, is worth nothing. All that he says in relation to the land and the importance of Wallula as a landing place is, of course, of the most unfavorable character. It is manifest, however, from his answers on pages 150, 157, 158, that it is a place of considerable trade, and the entrepot of goods transported to the United States Fort, and town of Walla Walla, and other portions of the territory. There is an answer (p. 164) to the Int. 31 on re-examination, which is of importance, as shewing that the lands which constituted a part of the farm of the Hudson's Bay Company at Walla Walla, have been surveyed by the United States. As to the remainder of this deposition, which is very hostile and very long, I do not think it is of a nature to require me to follow it more in detail. I would merely observe, however, that all the allegations of the witness, about a square mile of land at Walla Walla crossing the river twice, have no application to the case, as no claim is made in the memorial for any such *square*. He states that the town of Wallula (on the site of the Company's post) contains more than 1000 inhabitants, with two hotels and two stores (p. 158, 159), or three

as afterwards appears (p. 164). I ought, perhaps, to acknowledge the triumph of the learned counsel for the Respondents in drawing from the witness, on re-examination, the remarkable fact, that these hotels and stores bear little or no comparison with the first class hotels in New York and Washington, or with Mr. Stewart's marble store in the former city.

TERRY. (Pt. 2, p. 390.)—The testimony of this witness relates to Walla Walla and Umpqua. The former place he saw first in 1857 in possession of the United States forces, a year and a half after its abandonment by the Company. He thinks the fort did not cost more than \$2,500, and that he could put up such a building for \$10,000 (p. 391), which is the valuation put upon it by the witness Ankeny (p. 44) in 1859-50, (sup. p. 76). For the great discrepancy between these two sums Terry does not give any reasonable account.

He was at Umpqua one evening, camped outside. (p. 393.) His testimony is flippant and valueless.

SHOEMAKER. (Pt. 1, p. 251.)—Shoemaker's evidence applies to Walla Walla only. He went there in 1859, and left in 1864. His deposition is, in all respects, hostile, denying the value of the land and the importance of the landing place there, and (which at that period is of no moment) putting the value of the buildings at next to nothing. He is imbued with a double portion of the spirit which is seen in so much of the testimony of the witnesses from the western side of the Rocky Mountains. His statements, however, have nothing in them which ought to affect the claimants' case.

GILMORE. (Pt. 1, p. 60.)—This witness speaks of Walla Walla only. He gives a confused account of a supposed conversation with Mr. McKinlay. Something was said concerning the cost of the buildings there being £8 or £80 (p. 61). The witness who seems to be conscientious enough was evidently forced into the service of testifying and had no distinct recollection of what was said, or of what the conversation was about. All he knows positively is that there was an "eight" in the amount stated; whether it was eight hundred—eight thousand or any other multiple of that number he does not undertake to say. He ends by stating his "impression" that the sum named was the amount paid *in money* for work done on the wall (p. 62).

The other witnesses for the respondents concerning Walla Walla, will be noticed hereafter. Of these, Cain gives a good deal of evidence that is of value to the claimants. I solicit attention particularly to his account of the importance of the landing (p. 226, 227), and of the extent of the land occupied by buildings upon the Company's claim, the present site of the town of Wallula (p. 237, 242). It may now be observed, that the testimony of the Respondents regarding this Post is very conflicting and although for the most part contradictory of the evidence of the claimants, yet it is too defective in sufficiency of knowledge, in fairness, in compactness and consistency, to be received as in any material degree affecting the claim.*

FORT HALL.

This was the southernmost post belonging to the Company, lying as low as the forty-third degree of north latitude, within 200 miles of Salt Lake City and 80 miles of the nearest Mormon settlement on the Malade River in 1856. It was purchased from an American trading Company in 1836 or 1837. The amount claimed in the memorial for this post is £5,000 sterling—\$24,333.33. The evidence relating to it is strong and complete, shewing it to have been an important establishment whose value would justify a far larger claim. The witnesses McDonald, McKinlay, McArthur and Simmons, all concur in this statement.

MCDONALD. (p. 151).—Mr. McDonald, a valuable witness from his intelligence, appears to have first known Fort Hall in 1840, and remained there until 1847 (p. 151). He describes it as it was in 1846 in the following terms:—"Fort Hall was situated on the left bank of the Snake River: it was a four-sided establishment, built of adobes, with a large strong horse park on the north side of it, built of the same stuff; and if I remember well, I think it had three bastions—one controlling two sides of the horse-pen, and two controlling the four sides of the Fort. A large building of two stories high, one side of the Fort, and three other rows of lower

* For an account of the expence, difficulty, and danger of establishing Walla Walla, and also of the wealth in furs of the Snake country reference may be had to "The Fur Hunters of the far West" by Alexander Ross (Vol. 1. ch: 6 p. 117 and seq.

“buildings on the other three sides; and there was another row of
 “low buildings on the outside of the walls of the Fort—the wall of
 “the Fort making the back wall of the outside buildings.” He also
 declares the buildings and improvements to be correctly stated in
 Document A, and thinks that at the current rate of wages at from
 \$2 to \$10 per day they must have cost from \$70,000 to \$170,000.
 The importance of the Post is shewn by his answer to the 7th
 Interrogatory in which he states that trapping parties from there
 went down the Missouri, down Green River and Colorado, towards
 the Flathead Country, north and south to the Utah and Salt Lake
 Country, and down the streams of the Snake River. They also
 went down the Colorado to the Queretaro Country. And again,
 he says, (p. 153) “It is the centre of all the roads there—the road
 “to the United States and to Oregon, to Northern Missouri, and
 “British Columbia, to Mormondom and to California.” He gives
 the boundaries of the land around the Fort occupied by the Com-
 pany at that time and used for the pasturage of their cattle and
 horses.—“The pasture lands” says he, “used by the Company’s
 “herds, around Fort Hall, was along the left side of Snake River,
 “from Blackfoot Butte down to the mouth of the River Portneuf, a
 “distance of from 18 to 20 miles. Of this pasturage ground,
 “about one-half was bottom land along the river, and the other
 “half plateau, about 150 feet above the bottom; this land was free
 “from timber, except the banks of the streams and rivers, which
 “were fringed occasionally with cotton wood and scattering scrub
 “cedar on some small hills on the plateau. On the plateau was
 “bunch grass, and in the bottom, sheep grass and some bunch
 “grass. The soil on the bottom was light clay mixed with sand
 “occasionally, and alkali. It would be very productive when irri-
 “gated, which can easily be done. The soil of the plateau is a
 “gravelly loam, mixed with sand, with a dense crop of sage in one
 “or two places; it would all produce well except the sand, par-
 “ticularly wheat, if irrigated. We frequently crossed the river
 “with the herds, particularly in winter, for better pasturage.”

Upon these lands were pastured about 150 head of cattle, and
 250 horses (p. 152). He considers the pasture land worth two
 dollars an acre, and values the whole claim, as described by him,
 looking to its great advantages, at not less than \$1,000,000,

(pp. 153-162) which he says he would give for it if he had the money.

McKINLAY. (p. 72).—Mr. McKinlay went to Fort Hall in 1840, to take charge of the Fort and District. He describes the place in substantially the same terms as McDonald, proving the general correctness of the list of improvements in Document A, and the extent of pasturage and the number of horses there (p. 77).

"The fur trade," he says, "was their principal business, at that time a very large trade. On account of this trade it was a very important post to the Company, and from its central position for the sending out of trapping parties down to the Queretaro country, the Gulf of California, Jaoco, and Santé Fé, to the Blackfoot and Crow country, and to the Utahs; we furnished supplies to Fort Bridger, and to trappers, and to other traders going east and south. We got large quantities of furs from Indians and traders."

The profits of Fort Hall are estimated by him (p. 85) to have been the same as those at Walla Walla; that is, \$10,000 annually. The Company, he adds, "could have carried on trade to that extent, if not more, for a series of years, and when the condition of the country changed, a different kind of trade would have been equally profitable." The answer to the 37th Interrogatory (p. 85) shows the protection afforded by the Hudson's Bay Company to the early emigrants at Fort Hall, and the necessity for such protection to enable them to reach Oregon. The profits of the Company decreased there after 1846, in consequence of the wars between the United States and the Indians (p. 89-96).

McARTHUR. (p. 61).—The witness, McArthur, first visited Fort Hall in 1851, and remained in charge of it and of the Snake Country District about three years (p. 64), succeeding Mr. Richard Grant, now dead, who was in charge there in 1846, and if living, would have been an important witness for the Company. The description given by this witness (pp. 64-65) of the Fort and surrounding lands, corresponds with that of the preceding witness. It is, he says, "600 miles distant from Walla Walla," showing the enormous range of country over which the claimants had established control, and the largeness of their operations. A few acres of land only were fenced. The unenclosed land occupied by the Company, and used for the pasturage of their horses and cattle,

extended about 20 miles up and down the Snake River and nine miles in breadth, and was of the value of a dollar or a dollar and a quarter per acre. The buildings and improvements he values at \$150,000; and states that in 1856, when he was last there, the Fort and buildings were not occupied. This was the year after their abandonment.

SIMMONS. (p. 128).—Simmons was at this place in 1844. He describes it in general terms, but without the particular knowledge possessed by the other witnesses. Of the land he says (p. 129): "I consider the soil was good, and capable of producing anything the climate would admit of, with irrigation." The buildings and enclosures—except the wall of the Fort—are stated by him to have then been of wood. He saw bands of cattle at pasture within three miles of the post. There seemed to be a great deal of business done there; a great many people were there; and he considers the place to have been worth, with the benefit of the trade, \$80,000 to \$90,000.

It is to be observed that the whole of this evidence relating to Fort Hall is derived—with one exception—from the mouths of witnesses who had long resided there in positions which necessarily made them familiarly acquainted with the extent, importance, and value of the place; and that their evidence shows an estimate far higher than the amount claimed by the memorial. The claim, there, is \$24,333: the lowest estimate put upon the place by the witnesses is \$80,000, and the highest is \$1,000,000. The former, referring merely to their Fort and buildings, and advantages of situation, and bearing no reference to the extensive range for pasturage included by the others in their valuations. There can, I apprehend, be no hesitation in according to the claimants the whole of the amount claimed by the memorial. The Company was compelled to abandon the post in 1856, in consequence of the Indian war with the United States. The subject of this forced abandonment will be adverted to hereafter.

TESTIMONY FOR THE UNITED STATES.

The only witnesses whose depositions I shall notice immediately in connection with this post are those of Granger; of Adams, who speaks also of Flatheads, but the most important part of his testimony relates to Fort Hall; and of Dowell, who speaks also of Umpqua

and Walla Walla. The two Hewitts testify concerning Fort Hall alone; but their depositions and their position as witnesses are of a character which induces me to reserve them for consideration with those to be hereafter reviewed.

GRANGER. (Pt. 2, p. 378).—This witness, General Granger, speaks only of Fort Hall, and that in all respects in a depreciatory manner. He was there frequently between the 1st August, 1849, and June, 1850. It is important to mark the time. He gives an imperfect description of the post, (p. 379,) and then makes the following assertions: 1st. Of the buildings, (Int. 5). "The outer walls much dilapidated, cracked and crumbled; the buildings &c. old and decayed; the fort nearly, or quite untenable from the leaky and bad condition of the roofs, walls, &c." 2nd. Of the land, (Int. 9) "utterly sterile and worthless, producing nothing but wild sage." (Int. 10). "A little patch of an acre and a half spaded up. They tried to raise vegetables but did not succeed." 3rd. The trade, (Int. 11) "At that time there was little or no trade that I was aware of. The fur trade seemed to have been almost entirely abandoned." 4th. Cattle, (Int. 11) "twenty to thirty cattle and the same number of ponies and mules, not exceeding seventy-five in all."

Now I propose to contrast these sweeping statements with those of some of the witnesses for the United States, and particularly one who is among the most hostile in feeling towards the Company, Ankeny. His deposition has already been examined in connection with the Post of Vancouver (sup. p. 76). He was at Fort Hall also in 1849 and 1850; he speaks of it upon all the four points specified above. 1st. Of the buildings he says, (Int. 4, p. 40), "they seemed comfortable." 2nd. Of the land (Int. 5), "in places it seems to be pretty good, there were spots of land which seemed to be better than the average in that country," and again (Cross-Int. 3, p. 46), "They had quite a nice garden. * * I was about over the pasture grounds. The whole face of the country up and down was good pasture land. The company had a considerable stock when I was there." 3rd. The trade, (Int. 7, p. 41), "It gave evidence of a good deal of trade there, packing, &c., and there were a good many goods and furs there." 4th. The live stock. This has already been covered under No. 2. Meek, another witness of the United States, contradicts General Granger as to the quality of the land and the state

of the trade, in his evidence, p. 67 and 84; as does Adams also, p. 113, with respect to the land and buildings. His account of the fur trade there also differs widely from that given by the witness Granger.

I have presented these contradictions to show how little reconcilable the statements of the witnesses of the United States are with each other, in their estimates and accounts of the condition of the property. They are nearly all untrue, and no really reliable valuation can be formed outside of the evidence adduced by the claimants. Their valuations in relation to Fort Hall I have just exhibited and need not again revert to them. The only excuse I can find for the extraordinary statements made by this witness, a man of high rank, is in his answer to the 16th Cross-Int. (p. 383). He is asked whether his recollection of Fort Hall and its surroundings is not uncertain and indistinct from the lapse of time and other circumstances, and he says, of course many of the details have escaped his memory, it being nearly eighteen years since he was there. I would add, that either from want of accurate observation while there, or from want of memory since, his statement both of details and generals, is not merely defective, but in all respects grossly incorrect. There can be no reasonable doubt of the excellent quality of the land for pasturage; of the fact, that the Company pastured large numbers of stock upon it, and that the place was one of great value and importance until it was ruined by causes for which the United States Government is responsible, and finally abandoned from necessity in the war with the Cayuse Indians.

ADAMS. (Pt. 2, p. 112)—Thomas Adams, to whom allusion has just been made, gives evidence of the value of the buildings in 1853, and the quality of the land at Fort Hall. He estimates the buildings at \$3,000. His memory of the number of the buildings, and other incidents connected with them, is certainly defective, (see evidence of McArthur, the officer in charge, (p. 61,) and of the other witnesses of the claimants,) and his statements are at variance with the facts, but they are given in apparent good faith. Of the land he says, (p. 114) "It is excellent as a grazing country, none better;" and again, (p. 115) "that it produces fine grass, "suitable for hay, and of great value for cattle and horses." This witness speaks also of the Flatheads' Post, estimating the buildings there at \$1,200 (p. 114).—His testimony respecting the fur trade

at both these posts, is not of a nature to require special comment.

DOWELL. (Pt. 2, p. 357).—This witness was formerly owner and driver of a pack train, with which, from 1853 to 1856, he traversed the country through Oregon, until, in the latter year, he began to practice law (p. 358, 359). His deposition relates to Umpqua, Walla Walla, and Fort Hall. He first saw Umpqua in 1852, and values the buildings there at \$500. He was at the post again in 1853-4 and 5, during Chapman's lease of it, and found it much improved. He fixed a value in 1854, because, in his own language, he "got to studying how much" somebody, who was said to have *jumped* the land, "had made by so doing." The land he greatly undervalues, (p. 359, Int. 8,) as is manifest, independently of the estimates by the claimants' witnesses, from Chapman's evidence, who puts it at from ten to fifteen dollars per acre, (vol. 1, p. 13, 14,) and from Gardner's, who declares it was first class land.

Fort Hall the witness saw only once, in 1850. His evidence concerning it, is not important. He describes it as a large fort, built of adobe brick, about two hundred feet square, with buildings made on the corners suitable for a storehouse and a dwelling. There is a direct contradiction between his answer to the 10th and that to the 11th cross interrogatory. In the former he says it would cost most to build Walla Walla, in the latter Fort Hall. He saw Walla Walla only after it had been abandoned, in 1855 (p. 360). His estimate of it is of no weight, as he admits (Cross Int. 14, p. 364) that he has no knowledge or means of estimating, and that his estimate was only a conjecture.

The remaining witnesses for the respondents, who speak of this post, are Gibson, Simpson, Nesmith, Gray, Gilpin, Nelson and Gibbs. They will be noticed hereafter.

BOISÉ.

The evidence relating to this post is derived from the witnesses who testify concerning Fort Hall—with the addition of William Charles.

Fort Boisé was in the district of the Snake country, situated on the right, or north, bank of the Snake River, a little below the mouth of the Boisé River, about 350 miles from Fort Hall, and 250

from Walla Walla. The valuation put upon it in the memorial is \$17,033.

McDONALD. (p. 51)—describes it more particularly than the other witnesses. He speaks of it in 1846. "The Fort," he says (p. 153) "was similar to that of Fort Hall, built of adobes, walled, and bastioned with two bastions." The buildings specified by him correspond substantially with the list in Document A, and he adds: "The fort and buildings appeared to me fully as large as Fort Hall, except the dwelling-house, which was not as high, being only 'a story and a half, and I should say it was equally as valuable as 'Fort Hall.' The land enclosed was about 25 acres, worth, in his opinion, from 40 to 50 dollars then, and much more when he was examined in 1866. The pasture range occupied by the Company was from 4 to 7 miles square, and worth from \$1½ to \$1½ per acre. There were about 50 head of cattle and 130 horses pastured on the tract. The estimate of the witness upon the land, at his lowest statement of quality and price, would amount to \$13,000.

McKINLAY. (p. 72)—was at Boisé as early as 1840 and 1841. evidence (p. 75 and 76) confirms that of McDonald. He estimates the worth of the trade then at \$5,000 (p. 85), and thinks that profit would have continued or increased for a series of years. The decrease stated by him, after 1847, was caused, he says, by the Indian war with the United States (p. 96).

McARTHUR. (p. 61)—did not go to Boisé till 1851 (p. 63), when he was in charge of the post as part of the Snake country district. He says the fort and buildings, with horse park, covered about 350 yards square, and about five miles square were occupied and used for pasturage; it was worth 75 cents an acre. He values the buildings and improvements at \$150,000; but in 1853, these buildings, and the fort itself, were swept away by an extraordinary rise of the Snake River (p. 64). The Company commenced rebuilding in the same year, and were going on in 1854, when the witness left, but only one building had been then commenced.

SIMMONS. (p. 130).—He speaks to the value of the place in 1844. He says it was similar to Fort Hall, but on a smaller scale. The bottom land he considers better than at Fort Hall, and capable, by means of irrigation, of producing anything the climate would admit of. He values the post in 1844 at 20,000 or 30,000 dollars.

CHARLES. (p. 171).—The witness who last saw Bois , is William Charles. He was there in 1855, when it was abandoned in consequence of the Indian war. The destruction of the fort and buildings by the flood had occurred before his arrival there. The only building which had been afterwards put up was a house about 50 feet long by 15 broad. It is not to be denied that the establishment, in so far as the improvements were concerned, had then decreased in value. Nevertheless, the importance of the site, and of the trade there, and the value of the land, exceeded greatly the estimate of \$17,000 put upon it in the memorial: and it is, at the present day, worth far more either to the United States or to any individual, than the amount claimed for it.

TESTIMONY FOR THE UNITED STATES.

The depositions of five witnesses, McCarver, Allen, Simpson, Reno and Gibson, which regard Bois  alone or in connection with posts already mentioned, will be noticed here; the testimony of the others who speak of this post, hereafter.

McCARVER. (Pt. 1, p. 33).—The evidence of Mr. McCarver relates to Bois  alone. His account and estimate of the buildings there in 1843 are of no importance, as, according to the evidence of the claimants, these buildings were destroyed by flood in 1853, as stated by a witness for the claimants, McArthur (p. 64). The only buildings afterwards put up were a dwelling-house and store. McCarver values the land at from \$3 to \$5 per acre, and this valuation would give an amount for three miles square exceeding the \$17,033 claimed in the memorial. The remainder of the evidence of this witness concerns the usefulness of this Post to settlers, and the general protection and aid afforded, and is favorable to the Company.

ALLEN. (Pt. 2, p. 365).—Mr. Allen, who speaks of Bois  alone, is particularly virulent. He passed the place as an emigrant, and remained there about a month, in the summer of 1852, when a pestilence seems to have been raging among the Indians. He saw no trading transaction at all there, which is not remarkable if his extraordinary story of the mortality among the Indians, and the burning of the bodies at the Post is true (p. 366). The buildings he describes as ruinous, and of no value. He saw no cultivated

lands, and heard of no claim to cattle. He details several items of information, received, he says, from a Scotchman in charge, whose name he does not venture to give.

This Mr. Allen is the same witness who was examined for the United States in the Puget Sound Agricultural Company's claim. He there displays his feeling by the whole tenor of his testimony, and particularly by his volunteer declaration that he considered the Puget Sound Agricultural Company to be a mere contrivance for making a claim on the United States for the benefit of the Hudson's Bay Company. He seems to be a contributor to the press, and says he has published letters describing the place. I refer, for the contradiction of his statements, to the evidence of other witnesses, as well of the respondents as of the claimants, which has already been presented.

SIMPSON. (Pt. 2, p. 260.)—Mr. Simpson is a citizen of Oregon. He saw Forts Hall and Boisé, the former in 1852 and 1855, and the latter in those years and also in 1853, (p. 263) a day or two in each year, and speaks with heedless confidence of their value and of the extent of trade there. He says the condition of Fort Hall in 1852 and 1855, was good (p. 261), and in an off hand manner values it at \$5000, including the land (he does not say how much land) but adds, the land has no comparative value. He must therefore be understood as having applied the whole of his valuation to the buildings. It then, he says, had a limited trade with the Indians (p. 261), and volunteers of course, his "*impression*" that the reason the Company held the post was to have a claim upon the United States.

Of Boisé, he speaks even less favorably and values it at \$3000. The cross-examination exposes the usual want of knowledge of the witnesses for the defence. But it adds another to the numerous instances of direct contradiction of these witnesses among themselves as to the condition and value of the buildings.

RENO. (Pt. 2, p. 208).—This witness is stationed at Boisé. His first acquaintance with it and Walla Walla, was in 1859, some four or five years after the Company had been compelled to abandon them and they had been taken possession of by the United States. Consequently all that he says concerning the building at these two places is unimportant. Nor is his testimony relating to the land

of sufficient precision or value to justify the bestowal of time upon it. It is of a character common to a large portion of the evidence for the defence, already signalized, and I am willing to leave it without special comment.

GIBSON. (Pt. 2, p. 165).—The testimony of this witness relates to Walla Walla, Forts Hall and Bois . His knowledge of them is derived from short and casual visits whilst passing, and although he has the unstinted freedom in giving opinions concerning the state of the trade and other matters of which he really could know nothing, his statements are not of sufficient weight or importance to justify me in dwelling upon them. The chief object of his examination seems to be to prove certain statements made by Mr. Ogden in the course of conversation with the witness. The sum of these is, that the Company was holding its property in the expectation that it would not long retain it. In the witness' words (p. 175) : "They expected to get out of the country, they expected a settlement with the Government. He (Mr. Ogden) complained very bitterly of the settlers taking their land, and expressed his opinion that the United States ought to have protected the Company in its rights." And he frequently asked that protection. This is a pretty good representation of the feeling not only of Mr. Ogden but of that of all those interested in the subject. They despaired of protection, and looked forward with apprehension to being despoiled of all their property in Oregon. Mr. Ogden's confidential letters, if produced, would show how strong that feeling was. They were not produced, simply because his expressions are, in some instances, too bitter to be made public. I invite attention to the statements of the witness, concerning the landing place at Wallula. They will be found on p. 170 and 178. These show that in 1853, that landing place was the only one used, and on p. 171, he says that in 1853, there were no buildings there, but those of the Hudson's Bay Company, and no body else in the Country at that time. There is a good deal of other evidence in this deposition relating to these three posts, but it is of such a nature that it may safely be left to the test applied to it by cross-examination, and to the contradictions it meets from numerous better informed witnesses. The evidence of Ankeny (p. 42) in relation to this post has already been noticed (sup. p. 76).

OKANAGAN.

The Post at Okanagan was purchased from the Pacific Fur Company in 1813, and continued to be a place of great importance, while the Hudson Bay Company remained in Oregon (p. 37). It is valued in the memorial at \$19,466.

ANDERSON (p. 33).—The principal witness is Mr. Alexander Caulfield Anderson, who was at the post at various times subsequent to 1832, and was in charge of it from 1848 to 1851. He describes it (p. 37) in the following terms :—

“The boundaries along the Columbia River line were from the mouth of the Okanagan River upwards to a point called the ‘Little Dalles,’ thence northward along the line of hills till it struck the Okanagan River, near a point known as the ‘Montée ;’ thence down the Okanagan River to its mouth ; each side would be at a rough estimate from twenty-five to thirty miles ; that was the horse range, in which the different enclosures were likewise contained. It is an irregular triangle. Certain portions of it were very fine pasture ; other portions very poor : the good portions contained bunch grass, others sage bush, with grass interspersed. Along the Okanagan River there were some low bottoms with occasional patches of good soil, not exceeding thirty acres under fence, in little patches. In addition to this, as I before stated, there were small patches of good land along the Okanagan not fenced. * * * It was the great entrepôt for transport to the northern posts, by which I mean the districts of Thompson’s River and new Caledonia. The fur trade of the post itself was comparatively insignificant ; its great value was as being the stopping point, both for the shipping of the furs in the spring, and reloading the horses employed for transport for the northern posts. The brigades arrived there generally about the end of May ; they afterwards united with the Colville brigade, and the whole then descended the river in boats in company to Fort Vancouver, arriving there about the 15th June. They then re-ascended, and arrived at Okanagan about the end of July, by which time the horses had had time to recruit, the number of horses of the two brigades amounted to from 500 to 600 (six hundred.) The brood mares of the two districts were

"likewise brought down to pass the summer there, and probably
 "mustered about 200 more ; but as the number of horses was not
 "sufficient to convey all the goods at one trip, a second trip of a
 "portion of the brigade was made later in the season, and from
 "Thompson's River another trip during the winter. * * *
 "A certain number of cattle were kept for the use of the post, and
 "at times a large number of horses were left to recruit there, as
 "occasion demanded, in connection with the transport to which
 "I have already alluded."

The value of the land alone is estimated at \$50,000, and of the fort and surroundings, including all the land at £30,000 sterling, upwards of \$140,000. In p. 39, the document A, is declared to contain a correct list of the buildings.

Mr. Lowe also proves the correctness of the detail of buildings in document A, which was made up in 1847 under his direction. He verified it by actual measurement—and states that the four acres of land mentioned in it was what was then fenced, but by no means embraced all that was under cultivation. They estimated the buildings and out-buildings and stockades at \$25,000.

The testimony for the respondents relating to this post, and also, the others not yet mentioned, will be noticed together after the evidence for the claimants' regarding all these posts has been presented. The only departure from this arrangement would be in placing the observations upon Admiral Wilkes' deposition, concerning Colville in immediate connection with that post.

COLVILLE.

The Post of Colville was in importance next to Vancouver, and of large value. It took the place of the old post of Spokane, and was established in 1825 (p. 36), and is still in possession of the Company (p. 206). The estimate put upon it in the memorial, \$80,300, falls far below that made by the witnesses, and a motion has consequently been submitted for increasing the amount to \$126,582. The witnesses who speak of it are Lowe, Anderson, McDonald, Flett, and Mactavish.

LOWE. (p. 1)—Mr. Lowe first visited Colville in April, 1847, and has been there repeatedly since. He says, (p. 14) : "It is situated
 "on the southern bank of the Columbia River, a few miles south of

" the 49th parallel of latitude. At this post the Hudson's Bay Company carried on extensive farming operations, and had a grist mill for the manufacture of flour, with which article they supplied the interior posts in the Districts of New Caledonia and Thompson's River, as also Fort Nez-Percés and stations in the Snake country. It was the centre likewise of a large fur trade, including the Flathead country, Kootanais, and Columbia Lakes. Large numbers of horses and cattle were raised here. It was also at this place that all the boats required for the navigation of the Columbia River were built. It was considered the place next in importance to Fort Vancouver."

He proves the correctness of the list of buildings in document A. which was made by himself after actual measurements, and adds : " I observe that the quantity of cultivated land is set down in this list at 340 acres, but *that* I know is only what was under fence at the time, the hay and pasture land not being included. The flour mill was a strong, substantial structure, and the water power of great value." He appraises the value of all the buildings belonging to the establishment as they stood in the spring of 1847, at not less than \$100,000. He states that in 1849, several important additions had been made, especially by the erection of stockades as a further protection against the native tribes who had recently been at war with the Government. The land cleared of timber, and sown with grass seed by the Company, is described by Mr. Lowe (p. 15), as extending " about five miles along the River, and ranging from one to two miles back, the farming lands at Colville forming a sort of semi-circle with hills at the back and sides, and river in front. The 340 acres fenced were on this tract." From its excellent location on the river, and the scarcity of good land in that part of the country, he considers it very valuable, and estimates the land adjoining the Fort at \$20,000. On cross-examination (p. 30), in answer to an Interrogatory concerning the use made by Indians, traders and others, of the pasture lands of the Company, he makes the following statement :

" I understand by traders, men who traded furs from the Indians. At the time to which I refer, and as late as 1849, and at the posts about which I have given evidence, I think there were no traders except the Hudson's Bay Company. Indians who

"came to these posts for the purpose of trade were allowed to pasture their horses on the Company's ground while they remained, but rarely otherwise. At Fort Vancouver, the only horse Indians were the 'Clickatats,' who lived by hunting; they were few in number. The other Indians near Vancouver were what we called fish or River Indians, and used canoes instead of horses."

This, without doubt, shews the state of the facts as they existed, and fully sets at rest the pretention that the Company's possession was an imperfect one because in the exercise of their rights, other parties coming to the fort were for the time allowed to pasture their horses there. This was indeed a necessity, and in no degree impaired the right of the resident and permanent possessor, which the Company was. Had any tribe of Indians or other class of persons taken possession of these pasture lands at the same time with the Company, or afterwards with their permission, before 1846, it would have furnished an argument against them—but the occasional use with their consent shewn by the evidence, surely could not in law or in reason have any such effect. The whole tenor and weight of evidence shewing the control and mastery over the country is conclusive upon the fact, that the only possession *animo domini* of the cattle ranges was in the Company.

ANDERSON. (p. 33).—Mr. A. C. Anderson took charge of Colville, in 1848, and remained there until 1851. He verifies the list of buildings in document A. (p. 34). His description of the land occupied by the Company and used for fencing and pasturage is given in the following terms (p. 34): "The limits which I always considered as being comprehended in the Company's claim started from a point immediately above the Kettle Falls, at the foot of what I call the Mission hill, thence following the river upwards to a point known as "Dease's Encampment," that is, the water frontage on the Columbia, a distance estimated at about five miles. The back portion was bounded on the south by what is known as the "Mill River," throughout the greater portion of it; it extended up the Mill River some ten miles, including the portion of the Company's claim known as the 'White Mud,' thus forming an irregular square, and also including the mill.*

"There were from 300 to 500 acres under cultivation, and a lar-

“ger amount had been cultivated, though the whole was not always under fence ; certain portions were fallow. This was contiguous to the Fort. At “ White Mud ” there were about thirty acres under fence, and in addition to that, there was a large extent of prairie used for cutting hay, say about six hundred acres at a rough guess. “ The remainder of this land was used for pasturage ; and the witness “ adds (p. 35): “ though the apparent quantity of ground is very large “ it was not more than adequate for the subsistence of the animals “ we had on hand ; certain portions on the summits of the hills were fit “ for spring pasture, other portions for a later period of the year.”

The whole extent of the claim is stated to be from 16,000 to 20,000 acres. He estimates the value of 1500 acres of it about the Fort and 3000 acres in the vicinity of White Mud, making together 4,500 acres at about \$25 in 1846. And the pasture land at a dollar and a quarter an acre, which would give a total estimation of the land amounting to upwards of \$125,000. The largeness of the establishment and the nature and importance of the business carried on there are stated in answer to Interrogatories 13, 14 and 16 (p. 35, 36). The whole value of Colville, including the White Mud and the outposts of Kootenais and Flatheads, he estimates at £100,000 sterling. The cost of erecting the Mill alone, the witness believes must have been \$20,000, and he thinks it would have cost as much in 1863 (p. 43). In answer to an Interrogatory on cross-examination as to the value he would place upon the buildings and improvements in 1863 he says : “ It would be impossible for me to “ give a definite answer to that question, as I think I have previously “ remarked I consider the value of the property originally claimed “ by the Hudson’s Bay Company at and around Colville to have become greatly enhanced in value during the past few years. I regard its present value as being very great, owing to its position “ relatively to the mines that have been recently developed in “ British Columbia, and more particularly upon the Kootenais River “ and in the vicinity of the ‘ Arrow Lakes.’ * * *

“ I could not give you an estimate of what the cost might be at “ the present day of erecting such buildings as the Company have at “ Colville, but taking a period of some ten years back, when no saw “ mills were in existence, a house, such as is named in the list as the “ dwelling house, could not have been built with the facilities then

"existing, and finished as it was, for less than fifteen hundred
"pound "

MCDONALD (p. 150).—Mr. McDonald was in charge of Colville from 1852 to 1857. He again assumed charge of it in 1859, and is now resident there. He had visited it as early as 1839, and afterwards in 1849, and the two following years. His description of it is given at length, with great particularity, in his answer to the Interrogatories 24 and 25 (pp. 156, 157). From the long period of time that he was in charge of the establishment, and the minuteness and accuracy of the knowledge displayed, his evidence may be received as giving a complete and exhaustive account of this Post. The description of the buildings commences with the years 1839 and 1840—states the additions made in 1848, and shews that the present condition of the fort is much better than it was in 1848 and 1852. The description of the extent of the land corresponds substantially with that given by Anderson. The land which they farm at Colville, he says, is a "low basin of alluvial deposit about three miles long, "and from a mile to a mile and a quarter in width. The best and "greatest part of that basin was fenced and farmed by the Company "before and after 1846; some of the fences were changed from "time to time, to allow some of the land to repose. As before "stated, they farmed at the White Mud 30 or 40 acres of the "richest land in the whole country." He says of it: "Taking the "country together, the pasturage is good, but subject to fires. "The 'White Mud' plain is subject to overflowing; when the "overflowing subsides, a heavy crop of grass comes out, which is "cut for hay. The higher part of the 'White Mud' plain is "farmed, and is very rich land; with reference to the surrounding "country, the Company's claim is the best farming land within "hundreds of miles in any direction, especially to the north. It "is Washington Territory's last garden."

Wheat and other grains were cultivated there. The wheat was worth formerly \$2½ per bushel: the price at the time of his examination (1866) was \$3.00. Hay in the cock was \$9.00 per ton, and at Fort Colville sold for \$25.00. As might be inferred from those prices, the arable land at Colville is declared to be very valuable, worth at least forty dollars an acre; that at "White Mud" the same. The pasture lands taken altogether, save where

hay is cut, worth two dollars per acre, and the hay lands worth five dollars per acre (p. 160). The witness says (p. 166): "I should think there is at Colville from 1200 to 1600 acres, worth forty dollars per acre. If, as it undoubtedly will be, the site of a large town, there is no knowing what land there will be worth. In the vicinity of the 'White Mud' farm, within the lines described by me, from four thousand to eight thousand acres, worth forty dollars an acre; and 1400 acres, more or less, worth five dollars per acre. The pasture lands on the rest of the claim is a peculiar configuration, and I decline estimating the number of acres." This would give a value, taking the lowest figures, of upwards of \$200,000. In addition to this are \$20,000, the estimated value of the mill with its site, which is the best in the country (p. 160). Of the buildings he says, (p. 160): "Taking the country as it is, with men in it and supplies also, you would build it, hiring men at from \$2 to \$10 per day, for, I should say, from \$70,000 to \$120,000. I was not in charge when settlers first interfered with White Mud, nor did I closely observe it then in consequence, and therefore cannot exactly value them."

On p. 164 the actual cost of the buildings at Colville is (by estimate), from \$20,000 to \$30,000. There are mines near that place which tend to raise the price of produce and the value of agricultural land. These are the mines on the Columbia River, from Priests Rapids up to its head; those on the Pend'Oreille River and Salmon Fork; and those of the Kootenais Country; those of Rock Creek and American Creek, and of Shimilkameen and the mines of Northern Idaho; also those of Thompson's River and Cariboo.

FLETT. (p. 167).—The witness Flett, who resided near Colville from 1840 to 1851, and returned in 1856, taking a claim 25 miles distant, gives evidence which is not entirely consistent with itself, but which, if analysed, still gives a valuation to the claim for this post higher than that contained in the memorial. To the Cross-Interrogatory 10, "What, in your opinion, is the farming land at White Mud and "near Fort Colville worth per acre?" he answers, "I would not "give more than Government price for it, say one dollar and a "quarter per acre." This was a singular answer, as he had already stated that the price of wheat was three dollars a bushel,

of hay in the stack ten dollars, and at Colville from \$20 to \$35 per ton (p. 169). On resumption of the examination-in-chief, he declares that the land cultivated about Colville for the growth of wheat yields fifteen bushels to the acre, and that the cost of raising and sending to market would be \$15 per acre; thus leaving a clear profit of \$30 per acre. When the glaring absurdity is presented to him, he explains (p. 170) in the following words: "When I said a dollar and a quarter per acre, I meant prairie land, such as the Government allows people to go and take up. I would pay more for it if I could get a deed for the land; most of all the land that is in the plain round the fort I would give ten dollars an acre for with a good title. I would give no more for White Mud than I would for Colville with a good title."

In answer to the question whether there had not been some sales of improvements about the Colville country, he answers: "I know of one that was taken for a debt of two thousand dollars; when it was surveyed by private survey it was reduced to 160 acres; it was a pre-emption claim, and embraced a part of the Company's White Mud claim." Even at the rate of \$10 per acre, thus stated, which is evidently far below the value of land yielding so large an annual return, the amount very much exceeds that claimed by the memorial. With respect to the buildings, we have no direct evidence from this witness, but he states several facts of great significance on this subject, and which proves the costliness of buildings in that locality. He is acquainted, he says, with the price of labour at Colville. Carpenters are paid \$10 a day; farm hands \$60 to \$70 a month; hewers and choppers from \$5 to \$6 a day, and sometimes they could not be had at these prices. The price of lumber was \$50 per thousand. It is only necessary to compute the expense of building at these prices to shew that the amount, \$50,000, including the mill at which the buildings at Colville are assessed in the memorial, is far below their actual value, or their value at any time since 1846.

MACTAVISH. (p. 197.)—Mr. Mactavish says of Fort Colville that "the lands about it have "frontage on the Columbia River of several "miles, are very valuable and are daily becoming more so, in consequence of the discoveries of gold in the British possessions, "immediately above Colville, on the Columbia River, and towards

"the Kootanais country. The soil is very fertile around Colville, "as well as in other parts of the land claimed in the neighborhood."

The entire evidence relating to this important post is compact and complete. It establishes beyond any reasonable question the right of the Company to recover a larger amount than that claimed by the memorial. The buildings have manifestly been undervalued in stating the claim. These latter alone, including the mill and exclusive of the land, are shewn to be of a value which very much exceeds the amount there specified. Even Stevens' report (p. 220, Doc. Ev. of U. S.) which in no other instance estimates the property of the Hudson's Bay Company at a tithe of its value, gives for the buildings and improvements alone at this post \$25,000, about one-half their true value and one-half of the value put by it upon those at Vancouver. While, on the other hand, the proved value of the land alone, exclusive of all the buildings, shews also an equal or greater excess. I cannot conceive it possible that any difficulty should be felt in according an amount for the property more concordant with the valuation put by the witnesses upon it, and as already stated, a motion has been made to amend the memorial by raising the amount claimed for the land to \$73,000, making the entire claim for this post \$126,533.34.

The observations upon the statements made by Admiral Wilkes, in his Narrative relating to this post, but not included in his deposition, may be conveniently given here. He declares on p. 443 of vol. IV, the land at Colville to be a "rich black loam mixed with a portion "of gravel capable of producing anything." Again, "the whole "peninsula has the appearance of having been deposited by the "river, and is believed to be the only spot of that character in its "whole course." And again, (p. 444): "The peculiar character "of the soil renders Colville superior, for the purpose of cultivation, "to any other spot on the upper water of the Columbia." And p. 445, "The cultivation of crops is here the principal object of attention, for the whole of the northern posts depend upon Colville for "supplies of provisions." On the same page, it is stated, that in 1841 there were 196 head of fine cattle, 30 mares with foal, and 60 horses. I have signalized these passages in order to show the groundlessness and dishonesty of the statements made by many of the witnesses for the United States, and especially by the report of

Applegate and his colleagues, which will be found in the following pages, representing this post as of little importance and value.

KOOTENAI AND FLATHEADS.

These two establishments were outposts of Colville. The only witness who speaks in particular terms of Kootenai is Flett.

FLETT. (p. 167).—He was in charge of the post from 1837 to 1839, and last saw it in 1840. It consisted, he says (p. 168,) of three dwelling houses and a store—all of hewn square timber. It was situated on the south side of the Kootenai River near the middle of the Tobacco Plain, and about 300 yards from the river, and was in excellent order. It is about 400 miles from Colville. The whole of the Tobacco Plain, about 4 miles long and two broad, was used by the Company for the pasturage of horses. It was the best wintering ground in the whole country. Some of the land was good, from one-quarter to one-third would yield 15 bushels of wheat per acre. The buildings when he last saw them in 1840, would be worth at least \$6000. The trade of the post was in furs, buffalo skins and deer skins, and was valuable. Flett was succeeded in the post of Kootenai by Edward Berland, who is now dead, and the Company is, in consequence, unable to bring down the evidence relating to this place to the year 1846. I apprehend, however that the evidence of Flett is sufficient to entitle the claimants to the full amount which they claim, \$4,866. It is one of the cases included in the protest in which long delay on the part of the United States Government has put it out of the power of the Company to produce evidence as complete as it might have otherwise done.

McARTHUR. (p. 61.)—With respect to the post at Flatheads, McArthur was first there in March, 1846, and remained in charge about a year (p. 66.) The buildings then were a store house and two dwelling houses. There was also a corral for horses about 200 feet square. These he estimates at \$8000. Besides the fur trade carried on, there was a "trade in dried buffalo meat and pemmican, horse accoutrements, buffalo tallow and fat, par-flèches and appichemons, dressed skins and raw-hide cords, and also cords made of buffalo hair—all these last were necessary for the interior transportation of the Company's goods on horseback. They could not be obtained in sufficiently large quantity at any other post on

"the west side of the Rocky Mountains." It is manifest that this was an outpost of considerable importance, and the estimate put upon it in the memorial, \$2,920, cannot be considered in excess of its real value.

TESTIMONY FOR THE UNITED STATES, RELATING TO FLATHEADS
AND KOOTENAI.

ADAMS. (Pt. 2, p. 113).—Adams, whose deposition has already been noticed in connection with Fort Hall, says of the buildings at Flatheads (p. 114) that they would have cost \$1200; and (p. 115) that the Indians which trade there have large quantities of furs annually to dispose of.

HUDSON. (Pt. 2, p. 339).—Hudson's evidence relates to Kootenai alone. He speaks of two posts of that name, one north and one south of the boundary line. It is with the latter only that we are concerned. He proves the existence there of five buildings that are specified in list "A." One of them, he says, was a Church, but this is an error (p. 140). He also proves that photograph No. 1 correctly represents this building. From what he says, the place would appear to have been abandoned when he was there (1859-60), which, however, was not the fact, and in Int. 9 he speaks of the dwelling of the man in charge. His evidence is generally unfavorable, but is of little importance.

ALDEN. (Pt. 2, p. 550).—Mr. Alden also, speaks of Kootenai only. He saw some buildings in 1860, whether at the Hudson's Bay Company's post or not seems doubtful. I leave his deposition without further notice than merely to call attention to his description of the buildings and lands at the place he calls Kootenai, and request a comparison of it with the evidence of Col. Gardner, who was there the same year. Alden says, (p. 552, 553) there were a Mission House and four other buildings there and that there was no land fit for cultivation. Gardner says (p. 322, 323) there was a log house and a shed, and he saw no Catholic Mission House; that some land not exceeding 40 acres had been cultivated, and that the land was good. Both these statements cannot be correct, and it is probable that Mr. Alden never saw the Hudson's Bay Company's post at Kootenai.

This concludes the evidence for the claimants and a large por-

tion of that for the respondents, relating to all the posts specified in the memorial. The claimants submit, as the result of this proof, that the value of these posts, and the adequate money consideration which they are entitled to receive for them, is shewn by the following sums, viz. :

For Vancouver not less than	\$1,000,000
For Champoege, not less than	6,000
For the post at the mouth of the Cowlitz	
For Fort George	4,000
For Cape Disappointment, more than	14,000
For Chinook	1,000
For Umpqua	10,000
For Walla Walla, more than	81,273
For Fort Hall, more than	24,333
For Boisé, more than	17,000
For Okanagan, more than	19,000
For Colville, not less than	126,533
For Kootenais and Flatheads	7,786

These amounts, making together \$1,310,925 the claimants believe to be fully proved, notwithstanding any counter-statements contained in the depositions for the Respondents already considered, or in those remaining to be noticed.

Two of the sums claimed, one for Vancouver and the other for Colville, exceed the amounts specified in the memorial as the value of these Posts ; and by the motion submitted in amendment of that instrument, such addition has been made as will render it more accordant with the evidence. The addition under this motion, which is printed with the memorial, is based upon the evidence not only of the claimants, but also upon the most respectable portion of that adduced by the Respondents. It might with propriety have been extended to other posts, particularly to Walla-Walla and Fort Hall, but in order to avoid discussion it has been restricted to the two posts named.

The right to make this addition in the mode adopted, does not I apprehend admit of any question. It is a proceeding recognized in the Courts of Great Britain and of Canada, and I believe in most of those in the United States. In Lower Canada, it is formally provided for by the articles 18 and 491 of the Code of Procedure of that Province.

TESTIMONY FOR THE UNITED STATES NOT YET NOTICED.

I now proceed to offer comments upon the depositions of the witnesses for the United States not already noticed. They will be taken up in the order in which the evidence for the claimants relating to the several posts has been given.

I would again urge upon the consideration of the Honorable the Commissioners, the observations to be found in the pages 26-7 of this argument relating to the character of all this testimony; its want of a true basis of knowledge, and of a spirit of fairness and honesty. Of that portion of it which is derived from residents in Washington Territory, it is not too much to say that it is regarded by the claimants in the light of a general combination to defeat their just rights. Very little of what these depositions contain is legal evidence. From their great number and length, and the mass of irrelevant subjects introduced, it has been found impracticable to go into the examination of more than a very few of them in detail; but that is of little consequence, for the bare reading of most of them, testing the broad statements made in the examination in chief, by the cross-examination, will infallibly expose their worthlessness.

NESMITH. (Pt. 2, p. 23.)—The most conspicuous of the class of witnesses, who testify in an unqualified spirit of hostility against the claimants, is Mr. Nesmith, the Senator from Oregon. His deposition was taken very early, and made useful in Oregon in the procurement and examination of witnesses there. It discloses that he has followed a great variety of occupations. He began his career in Oregon in 1843, as a carpenter or teamster, and has risen to a very dignified station. His account of himself will be found on p. 31, Int. 22. He has been a judge, a member of the legislature, captain of a company in the Indian war, United States Marshal for Oregon, brigadier general, Superintendent of Indians, and finally senator of the United States. This is all highly to his credit, and it is not strange that he should have been selected as the model witness for the defence. His presumed knowledge and personal influence in the country would, of course, make his deposition a good pattern and guide for the miscellaneous crowd of witnesses who were to follow. That his evidence, whether he really knew anything of importance

or not, would be unfavorable to the Company, was almost a moral certainty; for popularity was his capital, and it had carried him triumphantly from one of the humblest to one of the highest positions in his country. It was not likely that a successful politician would jeopardize so valuable a possession by saying a word which he could avoid, in favor of a hated foreign corporation, the abuse of which, and particularly of its present claim, is the favorite topic of invective among his constituents. On the contrary, it was too good an opportunity to be lost, of increasing his chances at future elections. The calculation, therefore, upon which he was chosen as leader of the little army of witnesses of the United States, in Oregon, was sagacious, and it has not been disappointed. Although possessing no real knowledge which could make his statements, as an ordinary witness, of any value, he is ready with opinions based upon what he calls (p. 25, Int. 11) a pretty good knowledge of the course of trade and commerce in Oregon and Washington Territory, and with the general character and condition of the principal places there. Upon this stock he disposes of Vancouver and other places, not only for the past and present, but also of their future chances of becoming of importance. To shew how much he knew of the matter, and what his opinion is worth, I invite a comparison of his statements and predictions concerning the former Post, with the extracts from local newspapers to be found in the Documentary Evidence of the claimants (p. 488-9). As to his account of the buildings at Vancouver, given in his examination in chief (p. 23, 24), it is vague and unreliable, and the inconsiderate zeal with which he gives his opinions, is shown by his cross-examination (p. 34, 35, 36). His first and chief examination of the buildings was in 1843, when he was there one day. His statements concerning Fort Hall and Boisé, are based upon once seeing them in 1843 (p. 27); and he considers the value could not afterwards have been enhanced, as they were abandoned; his expression being, (Int. 18,) "pretty conclusive evidence of this is, that, as I am informed, they have both been abandoned." Thus ignoring the cause for the *compulsory* abandonment of these posts by the Company, although he could not have been unacquainted with it, as at that time he was in command of a regiment of volunteers in the Indian war.

Walla Walla he saw but once, in 1843; Champoege in 1844 and since, passing up and down the river. Of course, these places, in his judgment, were of little value, and of no prospective importance. He also speaks of Astoria and Cape Disappointment (p. 29, 30,) saying of the former that, upon a certain contingency, it will become a considerable town; and of the latter, that it has no value except for a lighthouse and fortification. The cross-examination with respect to all these posts, exposes how little he knew about them, and how anxious he is to depreciate them. His answers relating to the trade of the Company, (p. 30, 31,) require no comment. On one subject he seems disposed to speak with less apparent prejudice of the Hudson's Bay Company; that is, its policy toward the Indian tribes. He acknowledges this to have been wise and humane, although he does not forget to declare conspicuously that the motives of the Company were purely selfish. It was not to civilize the Indian, but to get a greater quantity of furs from him, that they treated him with justice and humanity. I earnestly commend the statement of the witness on this subject to the notice of the Commissioners. Coming, as it does, from an unfriendly source, it is of value on two points: Shewing—1st. The great and *quasi* sovereign power which the Company possessed over the Indian tribes; and 2nd. The beneficial manner in which that power was used. These facts, which corroborate the statements of Admiral Wilkes on the same subject, manifestly and necessarily shew, notwithstanding the denials by this and other witnesses for the United States, that the policy of the Company diminished the labor expense and difficulty of colonizing the country, and fitting it for the abode of civilization. It is to be remarked, that no wars occurred until after the treaty of 1846 had given the territory to the United States; and if that government had pursued towards the Indians, the wise and humane policy described by Mr. Nesmith, all the violence and loss of life which afterwards followed, would have been avoided.

The only remaining answers which suggest any special notice, are those relating to the dangers apprehended from the Indians, and the protection afforded to the American settlers by the Hudson's Bay Company. These are to be found on p. 47, 48. It will be observed that the statement made in answer to Cross-Int. 83,

that no apprehension was entertained until the Whitman massacre in 1847, is contradicted by the document fyled by claimants as F. 1, and recited, in part, in Cross-Int. 85, 86, 87, to which, the witness admits, by his answers to these interrogatories, that he was a party. The sentiments expressed in that document are widely at variance with the spirit of his present testimony. There is much other desultory matter in this deposition which I leave without further observation. I have, perhaps, dwelt too long upon it, longer certainly than its value as legal testimony would warrant; but the witness is in a high and influential position, and his deposition acquired a fictitious importance from having been used at once as an example and inducement for inferior men to follow.

THORNTON. (Pt. 1, p. 110.)—The deposition of J. Q. Thornton embraces three subjects. 1st, The report of a conversation with Dr. McLaughlin; 2nd, The value of land in Willamette valley where Champoege was situated, and 3rd, the value of land at Vancouver.

The conversations with Dr. McLaughlin occurred in the years 1847 and 1852 (p. 111 et seq.), after the Dr. had left the service of the Hudson's Bay Company; from which, according to the witness, he retired indignantly (p. 112), in consequence of the complaints made of his imprudent advances to settlers, saying, "Gentlemen, I will serve you no longer." This conversation, whether it really took place or not, is of no importance as evidence in forming an opinion upon the claim, but it is noticeable for the solemnity of the style in which it is narrated and for an assumption of lofty virtue, which characterizes the whole deposition. The Cross-Int. 6, (p. 116) brings to the notice of the witness a written statement made by him in 1850, which is unpleasantly at variance with his account on p. 112 of the cause of the Doctor's retirement from the Company's service. His answer to that Cross-Int. beginning with "small rate politicians," after a harangue of a page in length, declares (p. 117) his want of recollection in the following striking terms: "There is not upon my memory a trace of a single fact; the whole has gone, *glimmering through the dream of things that were.*" After this poetical mode of saying that he could not or would not remember an inconvenient fact, it is unnecessary to follow him further on this subject.

With respect to his estimate of lands, I would only remark, that

the value put by him upon that at Champoege, viz: \$2 per acre, is contradicted and neutralized by the evidence of Barlow, who resides and has large possessions in the Willamette Valley, and whose valuation is \$10 (see p. 224, 227). As to the lands at Vancouver, he knows nothing about them. His answer to the Cross-Int. 5 (p. 123), which affords another specimen of his peculiar mode of expressing himself, and the answers following it, admit his ignorance. This deposition covers no less than seventeen pages of high sounding phrases and of little else. I leave it, with an apology for having already bestowed so much time upon it.

GILPIN. (Pt. 2, p. 330).—Mr. Gilpin was Governor of Colorado. His evidence, like all that derived from political witnesses is strongly hostile to the claimants. No opportunity is lost to make incidental statements unfavorable to the Company, and he abounds in alleged conversations in which its officers declared the worthlessness of their trade and property, and their intention to sell or abandon as soon as they could. The repetition of this sort of thing may be considered a fixed form with all witnesses of this class.—He only refers to the years 1843 and 1844, and it must be repeated that the absurdity of these supposed statements and conversations is shewn, not merely by the concurrent evidence of the claimants, and of much of that of the United States, but also by the accounts produced from the Books of the Company already frequently alluded to. There was no decline in the trade and no intention of leaving the country at the time to which he alludes, and the conversations which he relates were either themselves imaginary, or they dealt in facts which were so. The witness speaks of six posts—Fort Hall, Boisé and Walla Walla, Fort Vancouver, Champoege, and Fort George. I shall notice his testimony on these several posts, which is confined to what he saw in 1843-4, not in the order in which they are placed in his deposition, but in that followed in the Memorial.

Of Vancouver.—He was there for a few days in November, 1843, and again in February, and also in April, 1844, (Int. 16, p. 333). He gives in answer to the following interrogatories, a general statement of the buildings there in 1844, and estimates them at \$50,000. His statement falls far short of the enumeration contained in list "A," concerning the truth of which, as made by Mr. Lowe

in 1846, there can be no doubt, and he omits all mention of the other improvements, such as fencing, roads and farm buildings at the mill, and other farms. His omissions may be partly accounted for by the fact that some of the most valuable buildings had been put up in the interval. He also estimates two saw-mills and a flour mill at \$65,000. It is to be observed that, after this and before 1846, another flour mill and another saw-mill had been built, and a second saw mill was begun in 1849 and completed in 1852, (see Crate's deposition, p. 105 and 106). If to the estimate made by this witness, amounting to \$115,000, of a small portion of the buildings and improvements at Vancouver, be added, the value of those omitted by him, or since built, it would not fall far short of the valuation put upon them in the Memorial. The land at Vancouver, including a mile square surrounding the fort, he puts at a cash value in 1843-4, of \$45,000 which is \$70 the acre. The remainder of the land claim he declines to value.

His statements concerning the cattle exhibit either a want of information or a want of truthfulness. He says, Int. 23, p. 335, the number was small. This is contradicted by all the witnesses of the Company, and by many of those for the United States. It is not controverted that large herds of cattle belonging to the Company ranged over the lands in the neighborhood of Vancouver at that period. Sir James Douglas says, that even in 1846, two years later, the quantity of live stock was 1915 head of neat cattle, 517 horses, 800 pigs, and 3000 head of sheep (p. 52). Lowe, Crate, Simmons, McKinlay and McTavish, of the claimants' witnesses, and Meek and Wilkes, of the United States' witnesses, all testify to the same point. Indeed, it was left for the zeal of this witness, to deny a fact not controverted by any other; and it is not unfair to say that his mistatement in a matter so clear and important, casts discredit upon the remainder of his testimony; most of which relates to Champoege, Fort George, Walla Walla, Fort Hall, and Boisé.

Of Champoege.—His testimony relating to Champoege (p. 335) is not of a character to require comment. He did not understand that the Company had any post there.

At Fort George he saw "a single building" (p. 336); but in cross-examination he estimates "the buildings he saw there at \$1,500" (p. 339).

His descriptions of Walla Walla, Fort Hall and Bois  (p. 331-2) are imperfect, and his valuations grossly unfair. The first post he places at \$9,000, including some five or seven acres of land, which he puts at \$10 or \$12 the acre (pp. 332, 338). The buildings at that post are proved to have been of great value, at least \$50,000, and a large tract of land, some of it under cultivation, to have been in possession of the Company.

The buildings at Fort Hall, he says, were log cabins. This is incorrect; they were all built of adobe. He thinks \$2,000 would be a generous and equitable price for the structures there. A reference to the valuation put upon these structures by intelligent and disinterested witnesses, whose evidence has been already adverted to, shews how *generous* and how *equitable* this estimate of the witness is. He saw no land enclosed (p. 331), but admits there were 350 head of stock there, and then resorts to his conversations to shew that the trade there was valueless, a matter which he could not possibly have had any personal means whatever of knowing.

Bois  he deals with much in the same manner, valuing the post buildings and all, at another generous and equitable price of \$3,000.

I will dwell no longer on this deposition. It is one of a series by which imperfect knowledge and strong prejudice are brought forward to break down the clear and intelligent evidence of witnesses, perfectly disinterested, and possessing such long and familiar acquaintance with the subject of which they speak, that they cannot be mistaken.

GRAY. (Pt. 1, p. 159).—The deposition of W. H. Gray, requires particular notice. This witness is conspicuous for bitterness of feeling against the claimants, and for the unqualified manner in which he endeavors to depreciate their property. He may be regarded as a representative man of the animosity which is all but universal in Oregon and Washington Territories. He has certainly done his best, or his worst, in the testimony he has given, but it will be found after all, to be by no means of a formidable character.

Mr. Gray "began life as a cabinetmaker by profession," (p. 159) was afterwards secular agent, mechanic, and teacher to the mission of the A. B. C. F. M. When examined, he was an inspector of customs; and I have no doubt, patriotically resolved not to allow

any portion of the revenue of the United States to go into the pockets of a foreign corporation, if by dint of swearing he could possibly prevent it. He is also an author, and is collecting materials for a history of the early settlement of the country, in which the Hudson's Bay Company is likely to hold a conspicuous place. (p. 189). It is well, before entering upon an analysis of the statements of the witness which in every line bear evidence of prejudice and unfairness, to point out the passages where these qualities, if not unequivocally announced, are at least specially manifested. The first of them will be found on p. 175, where it appears that unfriendly feelings existed so long ago as 1839. The witness says, there was a lack of courtesy towards him by the officers of the Company at Vancouver. They also refused to employ either the witness or his wife, probably having their reasons for doing so. He disclaims this as the cause of his unfriendly feeling, although he does not disclaim the feeling itself, and (p. 177), states that the post of Walla Walla, when in the hands of Mr. McBain, the Hudson's Bay Company's officer in charge, "became the immediate cause, with other influences in that section, of the destruction of the mission." Again, (p. 179), he says with determined virulence, "so far as the protection of the Company (was) afforded, "my impression is and always has been, that the mission of the Board "and of the Methodists would have been far more successful had "there been no Hudson's Bay Company in the country." And yet this was Dr. Whitman's mission, where the massacre took place, and to which the prisoners rescued by the Company from the Indians, belonged. On p. 182, Cross-Int. 109, it appears that the witness signed a petition against the Company in 1843, and did not again make his appearance at Vancouver until 1845 or 1846, and then only for four or five hours. But it is in his quality of author that he is determined to crush the claimants. (See p. 189, 190). He states in his answer to Cross-Int. 165, that for something over a year past he has been collecting materials, which he styles facts, incidents and statements, for a history of the early settlement of the country; and then, upon being asked for the second time (Cross-Int. 166), whether he had not during the last year made many and grievous charges in print against the Company, he answers, "I do not think I have made a single charge but what is strictly true,

from the best knowledge and information I could get." A reference to some of the newspapers containing these charges, will be given below. The expressions "*rob and steal*," "*open robbery*," applied to the claimants, and the "*curses*" denounced upon the commissioners if they award "*one single farthing*," will be found in p. 486, Doc. Ev. of the claimants. The cross-interrogatory 167 with the answer of the examining counsel to the objection of the counsel of the United States, should also be read, and some of the answers following on p. 190. These all show how thoroughly the mind of this witness is biassed and perverted. His animosity appears to reach the *inimicitia capitalis*, which, under the Civil Law, would have excluded his testimony altogether; and to this feeling arising from personal causes, must be added that which belongs to the community in which he lives, and the desire to obtain among them the popularity which is sure to follow such evidence as he has given. The deposition must, however, under our system, be taken for what it is worth: and it is, therefore, necessary for me to direct attention to a few of its grossest inconsistencies and violations of truth. His testimony relates to Vancouver, to Forts Disappointment and George, and to Forts Hall and Boisé: and also pretends to report certain conversations with officers of the Hudson's Bay Company, all of whom, except Sir James Douglas, are now dead.

I will first take up his statements relating to Vancouver. He never resided near that post, and it does not appear he was ever there for more than a few hours at a time. He first saw it in 1836 (p. 160). He was there again in 1842, and again in 1846 (p. 182) four or five hours. He thinks he was there three times in that year; and he *thinks* more than twice between that year and 1850 (p. 181). These seem to have been his only visits to the place; yet he speaks of the condition and value of the buildings there as if he had carefully examined them, and was master of all the knowledge necessary for forming a judgment.

His statements on this subject will be found chiefly on pages 164 and 181, covering the period of time from 1836 to 1850. They are, of course, most unfavorable, and contradict not only all the evidence of the claimants, but all the reliable evidence of the United States. I refer generally to the cross-examination on p.

181, and shall not follow him into details, with one exception, viz., his estimate of the storehouse, 100 feet by 40, built in 1846, which he puts at from \$500 to \$1000. This is one of the storehouses valued by the Military Board in 1854 at \$2,500, and the real cost of which was not less than \$10,000. This store, like the other large warehouses, was two stories high, substantially built in the Canadian fashion, with upright posts about eight feet apart, filled in with sawn plank, and was made very strong, to sustain a great weight of heavy merchandize. I refer to the memorandum of the cost of materials given in the observations on Buck's evidence, which shews that Gray's highest valuation does not approach the cost of the timber alone. Compare, then, this valuation with his statement, that he was paid for work on a house built by Dr. McLaughlin in 1846, in Oregon city, \$1800 (p. 183.) This was for labor alone, including no material whatever, and the house was but little more, or probably not at all more, than one-half the size of the store. I think these facts are sufficient to characterize the opinions and estimates of this witness as worthless.

A few words will suffice for his statements in relation to the other posts. Of Walla Walla he speaks circumstantially. He was there as often as once a month until September 1842. The buildings there, he thinks, cost £50 sterling, and that their value would not exceed \$1000. His impression is that Mr. McKinlay told him that £100, or less, would cover the entire cost (p. 161, 162). Now, the buildings at this place consisted, according to McKinlay (p. 73) who built most of them (and he is confirmed even by this witness, p. 180) of a wall with stone foundation, 113 feet square and 22 inches thick, with all the houses and erections specified in list A, except those at the farm, which were not then built. I would simply invite a comparison of this list and description with the estimate of £50 by the witness, and the pretended statement of McKinlay that they cost £100. The bringing the two into juxta-position alone suffices to shew the utter absurdity and falsity of the estimate. But the witness has himself declared it. He admits that 3,000 feet of lumber were used, and that it was worth 10 cents per foot, or \$100 per thousand (p. 179). This alone would amount to \$300, exceeding for that one item his £50 sterling, and leaving less than nothing to cover the cost of all

other materials and labor of the wall, and of at least some ten or twelve buildings. The cross-examination (p. 178) shews how little precise information the witness had; and he is driven at last to extricate himself (p. 180) by allowing what he had not before stated, that the buildings were not finished when he left. This is true; they were not completed until 1843, and those at the farm were not put up until after McKinlay left; whose particular and careful evidence in relation to all these buildings spoken of by Gray, is alone sufficient to shew the untruthfulness of his statements. McKinlay is fully borne out by Mr. Lowe's estimate of \$50,000 in 1847 (p. 12), and Mr. McArthur's (p. 63-7-8) at \$100,000 in 1848 and 1849, and Simmon's, at the same amount in 1844 (p. 131).

Of Fort Hall, and Boisé, the witness says, that he passed them some three or four times in the course of seventeen years. His testimony with respect to them is of no moment except to shew his eagerness to testify against the claimants on matters of which he is profoundly ignorant.

Of Fort George, now called Astoria, he should know more, as he has for many years resided there or in the vicinity. He admits the value of the two acres of land claimed to be \$1,000, against the other witnesses, who put it at \$2,000. His evidence relating to Cape Disappointment [p. 167] I leave without remark. The mode of putting the Interrogatory 37 draws out an answer which is not only untrue, but is also, certainly, unimportant as evidence of value.

I have now only to notice Mr. Gray's reports of alleged conversation with several officers of the Company. They will be found, as first stated by him, on pp. 161, 167, 168, and in cross-examination on pp. 188, 189, and 191. It will be observed that these pretended conversations all took place with men who, with the exception of Sir James Douglas, are now dead. This manufacture of evidence out of vague and aimless talk with men, who are no longer alive to contradict the witness or to explain their meaning, cannot be admitted with any safety, even when the good faith of the reporter is beyond suspicion; but when the witness, as in this case, is manifestly a violent and unscrupulous partisan, it is impossible, with any regard to the ends of truth or justice, to accord to it a moment's consideration. All these pretended statements of deceased officers ought

therefore, I think, to be dismissed at once. As to those imputed to Sir James Douglas, I would merely notice in the first place, that it is extremely improbable that a man of his known ability and great discretion should disclose to a person of Gray's position,—of whom he could have known little or nothing except that he was an American settler and therefore had hostile interests not only the policy of the Hudson's Bay Company, but also doubts whether it would succeed in getting a renewal of what the witness calls its charter, meaning, I suppose, the second license for exclusive trade (p. 167) ; and the unwillingness in consequence to make any further improvements. Be it remembered that these alleged communications which, if really made, would have involved great indiscretion if not actual breach of trust on the part of the officers of the Company who made them, were confidential (p. 188) to a person who was evidently distrusted by them ; for he complains of want of courtesy " by the controlling influence at Vancouver," p. 175, and admits that his services, with those of his wife had been refused there. Now with respect to the doubt about the renewal of the license in 1838, there never was any such doubt at all. It was a matter of negotiation under which the Company surrendered its first license which would not have expired until 1842, and took the new one without difficulty. This fact applies generally in contradiction of the pretended conversations with officers now dead, as well as of those with Sir James Douglas. It is of the most importance with respect to the former ; for on cross-examination (p. 191, Int. 175) the statements imputed to Sir James dwindle to a simple communication, in the way of business, that it was not the policy of the Company to furnish goods to missionaries or settlers ; and this declaration was followed by his making out a bill on London for the goods required. That is all that could he ventured upon by the witness in imputing statements to a living man, and it is harmless enough. This first communication with Sir James Douglas was in 1836, but he has another conversation prepared for him at a later period, concerning the fur trade in and after 1838 and 1839. The general and sweeping statement on this subject, will be found on p. 168. The answer to cross-interrogatory 180 (p. 191) alleges in positive terms that (Mr.) Sir James Douglas informed him that the fur trade was falling off and decreasing from that time on—that is,

from 1838 and 1839. This assertion could be directly contradicted if it were worth while to encumber the record by doing so, but it is already in effect contradicted by the whole tenor of Sir James' testimony. Nobody on reading that testimony can receive any other impression than that up to 1846 at least, trade with the Indians and the whole business of the Company continued to be in a most prosperous condition. The trade with Indians, he (Sir James) says (p. 52), from 1841 to 1846, yielded an average profit of at least £7000 stg. annually, exclusive of the outlay on buildings and improvements; and repeating the statement on p. 58, he adds, "and I don't think it varied from that sum in other years," that is, up to the time he left in 1849. But by an inspection of the account of profit and loss on trade from 1836 to 1846, extracted from the books in London, fyled with the deposition of Harris the accountant of the Company (p. 37), the fact is shewn that the returns of the Indian trade in 1838 and 1839 were in fact less than those of the year preceding and greatly less than those of the year following, and that there was no decrease up to the year 1846, or even later. The same facts appear from the accounts from 1840 to 1850, furnished by the Company to the counsel of the respondents and making part of his documentary evidence, (page 192 and following pages of part 3). From all these premises, it results incontestibly that the alleged falling off in the trade after 1839 is purely imaginary, and either the officers of the Company and Sir James Douglas among them volunteered to make statements to Mr. Gray, which they must have known were not true, or he has manufactured a story which is utterly and maliciously false: where the balance of probabilities lies, I leave to the commissioners to decide. But there is yet one passage in the deposition of this witness which I must notice as an evidence of his extreme inaccuracy even in indifferent matters. It is another report of a conversation. It occurs on p. 173. The witness states there that Dr. Whitman told him that he saw Mr. Webster as Secretary of State, and Mr. Filmore as President, and had conversation with them in 1842-3, and he made the same statement in an article published in the *Astoria Gazette* (p. 172) and swears to the truth of it. He says Dr. Whitman gave him almost *verbatim* the substance of that article (p. 173). Now it will not, I suppose, be questioned that Mr. Filmore did not become President until

1850, seven years later, and long after Dr. Whitman's death. This is another instance of Gray's facility in mistaking facts. This facility for mistaking or assuming facts, or for giving them a shape to suit his purposes, may be very convenient for the contributor of partizan articles to a newspaper or to a writer of popular histories, but it is not a valuable talent for a man giving evidence under oath.

Three numbers of the *Astoria Marine Gazette*, containing the history of this pretended interview and the expression of Gray's sentiments toward the Company, are produced by the claimants under the designation F 22, Nos. 7, 8, 9, from which extracts of the more pointed passages have been printed (p. 485-6). I think it is unnecessary to say more of this deposition.

CAIN. (Pt. 2, p. 222.)—Mr. A. J. Cain's testimony relates to Walla Walla and Colville. He first saw the former place in 1859, and his account of the buildings affords, therefore, no guide for any approximate valuation of them anterior to 1855, the year of its abandonment by order of an officer of the United States. He says but one building was then standing (p. 223) and it had no roof upon it, but he estimates the ruins at \$3000 (p. 224). Repairs were afterwards made by Higgins and others who had taken possession, and this building was leased in 1862 for \$150 per month, (p. 227, 238) and continued at the time of the examination of the witness to be worth \$50 per month. Of his evidence concerning the quality of the land at Walla Walla, I shall say but little. With some qualification to be found in various portions of the testimony, as well of the United States as of the claimants, it may be received as tolerably correct so far as it goes. He says (p. 227) "there is good grazing land on the plateau and hill sides within three miles or less of the old Fort" and again (p. 231), "that Walla Walla and Colville valleys embrace the only two large bodies of agricultural or valuable lands east of the Cascade Mountains in Washington Territory." But his evidence concerning Wallula and the section of land around the old Fort, is important. He says it has become valuable as a landing; and that Wallula is the most important landing on the Columbia River in that portion of the Country (226, 227); steamboats making daily trips there. And he answers to Cross-Int. 30 (p. 242,) that there are twenty or thirty persons carrying on trade there, and that about

80 acres around the old fort is occupied by the buildings of these traders (p. 237). This is the half mile square which William Anderson, a witness for the claimants, values at \$40,000 or \$50,000. Another noticeable point in this testimony is that relating to the rate of freight from Portland to Walla Walla and Boisé. "This" he says, "prior to the gold excitement, was from \$120 to \$130 to "Walla Walla, and from that place to Boisé 20 cents per lb." This is important in shewing how costly all articles used in the construction of the buildings at these two places, not obtained on the spot, must have been.

That portion of the deposition which relates to Colville is of little value. He was there but twice, a day each time, in 1859 (p. 227.) He describes the buildings (p. 224) as of the most ordinary description, built of logs, put up in a rough manner. He does not remember the dimensions; was struck with the dilapidated air the place wore, yet he takes upon himself to pronounce upon their value as being \$7000. That the buildings were not log houses, is shewn even by the report of Applegate and his colleagues. Indeed, in cross-examination (pp. 228, 229, 230) the witness virtually contradicts his account of them given in his examination in chief. The truth is, he speaks too confidently from vague impressions and imperfect recollection, and knows very little about the character or condition of the buildings. I leave his cross-examination on this subject to its effect upon a careful perusal, without dwelling further upon it.

This witness in cross-examination proves in a somewhat evasive and indirect manner, but so as to leave no doubt in any unprejudiced mind, that the free use of the portages on the Columbia River is obstructed and indeed destroyed. It being shewn as a matter of fact that all the lands upon which the landings and portages were, have been granted by the United States to Rail Road Companies or to private parties, in whose possession they now are. For the evidence upon this point, I refer to the pages from 246 to 250. I cannot leave his deposition without noticing the striking instance it affords of the discursive manner in which the witnesses for the defence have been examined. Here are no less than six examinations and re-examinations in chief. Whenever the cross-examination has shewn the unsoundness and incorrectness of the

statements of the witness upon any or all of the facts on which his first evidence has turned, he is immediately taken in hand again by direct examination. To this course, which is contrary to the recognized rules, and subversive not only of the object of cross-examination, but of all regularity of proceeding, the claimants have not unfrequently been obliged to submit in order to escape the greater evil of increased delay in resisting it.

SUCKLEY. (Pt. 2, p. 540).—Dr. Suckley is brought up to load the record with conjectural estimates of the comparative value of the buildings at several of the Hudson's Bay Company's posts. He speaks of those at Colville, Boisé, Walla Walla and Okanagan. He professes in a bold, off-hand manner, from having seen these places on an occasional visit to each, while on the Northern Pacific Railroad exploration, to settle their respective values in relation to each other, and to tell the number of days and of men which would be required in their erection. The deposition is remarkable for the flippant and confident tone in which he pronounces his opinions upon matters upon which he really had no substantial knowledge, and is of the same type as a large proportion of those already examined. I merely refer to the cross-examination to shew this, and leave it without further remark.

MOWRY. (Pt. 2, p. 384).—This witness, who is a miner, speaks of Colville, Okanagan and Walla Walla. He visited them on a survey, under Capt. McClellan, for the Pacific Railroad, in 1853. He was about 24 hours at Colville, where he dined with Mr. McDonald, and seems to have been dissatisfied with his dinner (p. 384). He first says of the buildings, that they were serviceable and in tolerable repair, and then, that they were decaying and there seemed to be no desire to keep them up, and declares they had depreciated 40 per cent. since they were built. He admits on cross-examination (p. 387) that he made no special examination, and that his opinion was not formed when he was there, but had been made up since he knew he was to be a witness. It appears, however, from his answer to the 6th and following Cross-Interrogatories, that his recollection is very imperfect, and indeed it is plain that his observation of the place when there, was not of a nature to enable him to make any true estimate of its value or condition.

Of Okanagan he knows even less. He was in the fort twice, a

few minutes each time. His assertions in relation to this place, and to Walla Walla, are shewn by the cross-examination to be so utterly destitute of any basis of knowledge, that they do not deserve a moment's attention. He was expected to say something unfavorable to the rights of the Company, and he said all he could.

GARDNER. (PT. 2, p. 191).—Mr. G. C. Gardner seems to have been a favorite witness, having been brought up and examined three times at intervals of six and two months. He was assistant astronomer and surveyor of the N. W. Boundary Survey. He saw in the course of that survey the posts of Kootenais, Colville and Okanagan, but with the exception of the estimates applying to Colville, says nothing of importance. He speaks of photographs of Kootenais and Colville, but these photographs can give no accurate idea of the extent or character of buildings. That of the buildings at Colville represents merely the rear of the subordinate officer's quarters and the gable end of a store house (p. 198). He admits on cross-examination (pp. 196, 197, 198) the imperfectness of his observation and recollection.

In his third examination which took place some eight months after the first, and two months after the second, the witness is made to give an estimate of the cost of buildings erected by the American N. W. Boundary Commission at Colville depot. This amount he gives from different accounts produced, at \$3,880.36, (p. 203,) and says that the buildings of the Company were not more than twice as extensive nor more than double the value of these, but it is evident from his answer to Int. 18, p. 194, and to Cross-Int. 7 and following Cross-Ints. on pp. 197-198, that he has a very imperfect recollection of the buildings at Colville, and if his comparison of their number and extent be tested by reference even to the hostile report of Applegate and his colleagues (p. 275), it will be seen that it is of no value. Without dwelling upon this subject, I request attention first to the specification of the buildings of the American Commission in this deposition (p. 199), and then to the specification of the buildings of the Hudson's Bay Company in McDonald's deposition, (claimants' Ev. p. 156-157). The gross injustice of the comparison made by the witness will then be made apparent.

I have but one other point to note in this deposition. It is the

statement (p. 205-6) concerning the buildings of the British Boundary Commission which were erected within less than two miles of Fort Colville. The witness says they were more numerous than those of the American Commission, and worth three times as much. The fact is they cost \$20,000, and in extent and number were not more than half equal to the buildings of the Company at Colville, and bore no comparison with them in solidity and carefulness of construction.

TOLMIE. (Pt. 1, p. 97).—Abandonment of Posts.—Dr. Tolmie has been examined on the part of the defence for the purpose of proving the abandonment, by the Company, of several of its posts; particularly of Walla Walla, Forts Hall and Bois , Okanagan and Umpqua. His evidence is very full and important on this subject, and fully sustains the position taken upon it in this argument. It is so complete that it is unnecessary to make any comment upon it. I respectfully request that it may be read as a supplement to the explanation to be hereafter given on this subject, and as conclusive evidence both of the causes of abandonment and of the impracticability and uselessness of any attempt on the part of the Company to re-occupy the posts which it had been compelled so to abandon.

HEWITT. (Pt. 1, pp. 381-385).—There are two witnesses of this name. Their evidence, which relates to Fort Hall, is worth nothing; but I have a word to say of each of them, upon facts which give loud testimony to the state of feeling in Washington Territory, and the utter impossibility of obtaining for the Company any measure of right or fairness there. The former of these witnesses, the Hon. C. C. Hewitt, is Chief Justice of Washington Territory. He was examined also in the P. S. A. Company's claim, and his charge in a case by a lessee of that Company against a trespasser on its lands, is produced (Doc. Ev. of P. S. A. Co., G 1, p. 176) and is made evidence in this cause also. I refer to it as the most ingenious specimen of judicial mystification of a jury which it has been my lot to encounter. It is conclusive upon the question of the uselessness of any resort by the Companies to the courts of the country.

R. H. Hewitt is, or was, the editor and proprietor of the *Pacific Tribune*, and clerk of the Court. It appears from his examination

in the P. S. A. Company's case, (p. 93 and seq.) that one of the Counsel of the Hudson's Bay Company, who resides in Washington Territory, knowing the state of feeling there, and the extreme difficulty of getting anybody bold enough and honest enough to testify in favor of the claimants, sought to disarm some of this hostility by inducing Hewitt to keep silence in his paper on the subject of the claim,—not to advocate it—but merely to abstain from abuse, and from adding to the violence of the popular excitement. He agreed to do so for one hundred dollars, which were paid, but, after pocketing this payment, or bribe for doing what one would suppose any just or honest man would have felt bound to do, he finds the pressure, either of his own animosity or that of those about him, too strong to resist, and returning the money betakes himself with increased vigor and venom, to the business of misrepresentation, invective, and denunciation. Specimens of his work have been put on record, contained in several numbers of the *Pacific Tribune*. The inflammatory articles in that newspaper, were continued in every publication during the whole time that the testimony of the claimants was being taken on the North West Coast ; but a selection of a few only has been made, which afford example of all the rest, and shew, without a possibility of mistake, what sort of justice and fair play the Hudson's Bay Company had to expect from the population of Washington Territory.

NOBLE. (p. 395).—I notice this deposition merely to say, that it can have no effect as evidence. It purports to give an expression by Mr. Ogden in 1850, that the fur trade was ruined by the depreciation of beaver. Mr. Ogden is no longer alive to contradict or to explain the words which this witness and others have imputed to him. Whether in the course of general conversation he said something to the effect stated by the witness, who is not very sure about it, Cross-Int 9, p. 397), is of little importance : and of still less importance is the alleged statement of Mr. Graham, that he had taken a claim at Vancouver. Whatever he may have stated, the fact is simply, that he never did so or intended to do so, for any other purpose than to protect the interests of the Company. This witness in his examination in chief (Int. 11), says that Mr. Graham stated also that he had taken the oath of allegiance to the United States. On cross-examination (Cross-Int. 15), he considers

this allegation too hazardous to persist in, and modifies it by saying he had declared his intention to become an American citizen. The one allegation is as unfounded as the other, for at this date, 17 years after, Mr. Graham is still a British subject.

MOSES. (p. 327).—The deposition of Simon P. Moses, relates to the payment of certain duties of customs by the Hudson's Bay Company, and to the remonstrances of Dr. Tolmie and Mr. Balenden. I cannot see that it has any bearing of importance in this case.

GARDNER. (Pt. 2, p. 319).—Mr. Charles Gardner, a photographer of Washington, proves certain photographs produced by the respondent to be true copies of the original photographs. I notice his testimony merely to exhaust the list of the witnesses for the United States. With respect to these photographs or the others produced by the respondents, I do not think they require any notice further than the obvious remark that they are a kind of thing which cannot be relied upon as giving any complete or just representation of the places to which they relate, and still less as a means for judging of the construction or value of those places—I dare say, pictures giving a very pretty and imposing view of them all, might have been obtained by the claimants, had they supposed that the minds of the Commissioners were likely to be influenced in that way.

NELSON. (Pt. 2, p. 86).—The deposition of Mr. Nelson, formerly chief justice in Oregon, contains a kind of report of notes of conversation alleged by him to have been held with Dr. MacLaughlin in consequence of certain instructions received from the Department of State of the United States (p. 87). Apart from these notes and the manner in which they were taken, his evidence is of little import, with the exception of two or three points in which it is favorable to the claimants. He was instructed in the fall of 1852, by a letter received from Mr. Webster, then Secretary of State, to make inquiry into the character and value of the claims of the Company. Instead of applying to the chief factor or any officer of the Company, he goes to Dr. MacLaughlin who had left its service between six and seven years before, and was then residing in Oregon city. Dr. MacLaughlin was an old man, who had left the service of the Company excited and annoyed by its censure for his imprudent conduct in giving indiscriminate credit to settlers, and who had evidently

the garrulity of age (Cross-Interrogatory 14, p. 93, Cross-Interrogatory 25, p. 95). He had a claim for land in Oregon city, and talked of applying to the territorial Legislature and to Congress to confirm his claim. "He was," says the witness, "much disturbed about it and made many and grievous complaints," (p. 95). Now Mr. Nelson was Chief Justice ; his principal, Mr. Webster, was Secretary of State, and it is perfectly easy to understand how an excitable and talkative old man, with his mind eagerly bent upon making interest for his cause with powerful advocates, should without intentional misrepresentation give such an account of the rights of the Company as would be acceptable to parties whom, from their relation to it, he knew to be desirous of cheapening those rights. The answers of the Dr under the manipulation of an acute lawyer, were reduced into the notes now produced. It is not pretended that these notes contain the language of Dr. MacLaughlin (see Cross-Interrogatory 13, p. 93, and again Cross-Interrogatory 17, p. 94,) nor do they embody all the conversations on the subjects to which they relate. So much was noted, and in such form as suited the purpose of the questioner, and no more. Of course, these notes cannot, by any latitude of construction, be accepted as evidence ; but if they could, I submit that no reliance could be placed upon them. They were taken under circumstances, and presented in a form in which they can be of no weight ; and I have not presented these observations because I find anything formidable in them. If examined, they will be found to contain manifest inaccuracies, which show that either the informant's memory was at fault (which it probably was), or that the notes themselves are incorrect. He says (p. 98) "there are no trading posts north of the 49th degree of latitude." This is an inaccuracy. The Hudson's Bay Company had numerous posts north of that parallel, which had been established long before those south of it. The precise meaning of the words quoted is made uncertain by what follows them. Whether it contradicts those words, or leaves the phrase without meaning, it is difficult to determine ; but it is certain that statements so loosely taken down and so unintelligible, cannot with any safety be received as evidence. There are several other palpable mistakes not in themselves important, but which show the general inaccuracy of the notes. They state that Kootenais is on the Kootenais

Lake ; there is no such lake. The cattle range is given much as it is stated in the memorial, and by the claimants' witnesses ; but the distance between the Cath-la-pootl and the River Duthé or Vivet, is stated to be 20 miles, whereas it is 35, as shown by the map (p. 99). Again, in speaking of the buildings at Vancouver, the notes say that there are four stores of 100 feet, and a granary 60x40, mess-house and office. These are all the buildings specified. Then follow the words "\$100,000 expended." Now, the fact is, that there were only three stores of 100 feet, and that the granary was not 60, but 50 feet by 40. If error occurs in all the instances in which anything specific is stated, is it not fair to conclude that it may also occur in other statements? Is it not, for instance, more likely that Dr. MacLaughlin should have used the denomination of pounds sterling, in which the books of the Company were kept and its business was done, and to which he had been accustomed all his life, than that of dollars? And if so, his statement concurs with the estimate contained in the memorial. I have, perhaps, dwelt too minutely upon this deposition, which, in a legal point of view, is unimportant. Before leaving it, however, I must suggest a probable connection between Judge Nelson's inquiries, and Mr. Webster's letter (Doc. Ev. F 6) and his draft of the agreement of sale for \$1,000,000 (F 66), which will be hereafter more specially noticed.

I now pass to a document and depositions of a more extraordinary character than any heretofore noticed. I allude to a paper called a Report, signed by three men—Messrs. Applegate, Rinearson, and Carson, and produced with their depositions.

REPORT AND DEPOSITIONS OF APPLGATE, RINEARSON, AND CARSON. (Pt. 1, pp. 265, 314, 356).—These depositions are very long, and I do not propose to enter into any elaborate analysis of them. It would be a trial of patience and waste of time to do so. I shall restrict myself to an exposition of the character of this attempt to manufacture evidence, and of the manner in which it has been carried out; and then specify briefly, the grounds upon which all the statements of these three witnesses, whether in the Report or out of it, must be considered as wholly unreliable and worthless. The contrivance of appointing experts, or a sub-commission, to aid, by their light, the deliberations, and to

anticipate the decision of the gentlemen appointed by the respective governments of Great Britain and the United States, appears to me remarkable for ingenuity and not less so for some other qualities which I am unwilling to specify. But the choice of persons is still more remarkable. Three men, known for their hostility to the Company, are selected for the purpose of visiting and valuing, or rather undervaluing its property. The leader of these, Applegate, declares (p. 311) that he has "written, published, and expressed his earnest opposition to the claim"; one of his letters will be found in the Doc. Ev. (F22, No. 5, p. 483); that he has "an earnest and strong bias against the claim, and has done all in his power to weaken and defeat it." The others are less bold in avowing their enmity, but it is apparent from the whole tenor of their answers, that they are not less virulent. Neither denies his "*bias*." As to Rinearson, see Cross-Int. 253, p. 354, and as to Carson, Cross Int. 188, p. 378. The latter also admits (p. 367) that the report was *made as favorable as possible to the United States*; this witness or commissioner, has, moreover, a large interest in the rival city of Portland.

The report was written by Applegate (p. 357), an educated and intelligent man, under whose direction and control his colleagues of a lower class, evidently acted. It may be considered, indeed, altogether his work, the others being merely subordinate assistants. After having received from the Counsel of the United States in Oregon, instructions which will be found printed with the deposition of Applegate, (p. 269,) together with a supply of the necessary funds, the experts entered upon the fulfilment of their mission; and that they fulfilled it to the satisfaction of their employer, is manifest from the Report, which as one of the witnesses has truly said (p. 367) "was made as favorable as possible for the United States." But, as not unfrequently happens with zealous and unscrupulous partizans, they have overdone their work, and when in the position of witnesses they are forced to explain and justify their Report, they are compelled to make avowals which expose its utterly untruthful and worthless character. That in making it they had no personal knowledge on the subject is apparent from their own statements. So ignorant were they, that Applegate did not know that there was any conflict of claimants, or uncertainty of title to land at Vancouver (Cross-Int. 200-201. p. 308); and Rinearson in 1866,

the date of his examination, did not know that in 1860 there were any settlers besides Short on the Company's land at Vancouver. (See Cross-Int, 231 to 241, p. 351-2-3.)

The report is all based on loose information and vague rumor, and has scarcely one legally proved fact to sustain it. The claimants might, therefore, have moved for its rejection with all the evidence relating to it. But without offering a formal motion to that effect, I submit, that the whole of the depositions as well as the report are objectionable and inadmissible as evidence :

1st. Because they relate to the value of the Company's property in 1866 (Applegate, 268, and Report p. 271), long after it had been compelled to abandon all its posts except Colville, viz : six years after the abandonment of Vancouver, and the posts dependent upon it, and ten years after the abandonment of Walla Walla and the posts dependent upon it.

2nd. Because the witnesses have a strong and manifest bias and hostility against the Company, and especially against its present claim.

3rd. Because their examinations, and the Report based upon them, are *ex-parte*, and neither these nor the depositions have any other foundation than vague hearsay and loose rumors.

4th. Because the length of time taken for the examination upon which the Report and depositions are based, was obviously and absurdly insufficient for the purpose, and was a mere pretence to cover a foregone and unfair estimate.

5th. Because it is shewn by the depositions that the Report is dishonest and untrue.

The 1st, 2nd, and 3rd of the foregoing grounds, I leave without remark. They will be found to be amply sustained by the references already given, and by the whole body of the depositions.

The 4th and 5th grounds are suggested by some striking passages in the evidence, which I cannot pass over in silence.

The first of these relates to the time and mode of examination at Walla Walla.

The time occupied, according to Rinearson, (p. 334) was two hours or three hours, which must have been before and about sunrise, before the steamboat in which they went to that place left the landing. Applegate (p. 289) and Carson (p. 367) say

three or four hours, but whether a part or all this was or was not in the night-time, it is difficult to determine from their answers. The fact seems to be that the boat arrived late at night and left about sunrise in the morning, and it was in whatever interval of daylight could be found during its stay at the wharf, that the examination was made, which is expected to overthrow the evidence of the claimants, and also much of that of the United States, and to be a basis for the decree of the Commissioners. As to the mode of examination, it will be found under the same references, and needs no comment to explain its character.— At Vancouver the whole time taken for the examination was a day and a half (Applegate p. 306), of which five hours (Rinearson, p. 320) were bestowed upon the ten sections of land nearest to the Fort, that is to say, on an area of ten square miles, including the Fort and Military Reserve, valued in the Report at \$5 the acre. The remainder of the time, which would be one day, must be presumed to have been employed in going over 150 square miles to ascertain the value of different tracts of it upon the several plains known as the 1st, 2nd, 3rd, and 4th, and mill plain, and in obtaining information on the value of the mill sites, and also of the town lots.

The kind of examination which could be made within this limit of time is sufficiently apparent; but the examination which was really made is shewn by the answers found in Applegate's deposition, p. 306 to 310; in Rinearson's from p. 319 to 328; and in Carson's from p. 368 to 378. It is worthy of notice that the only persons named, from whom inquiry was made, as to the value of town lots, was one Mayberry, a farmer who lived seven miles distant from Vancouver, (p. 307 and 374), and, perhaps also, from Dou-thet, (p. 327), whose unfair and contradictory testimony has already been spoken of; and upon this information the estimate of that portion of the property seems to have been made. It would be very wearisome, and I think it is unnecessary, to go into the details of the inconsistencies, equivocation, and palpable bad faith displayed in this mode of estimating the property at Vancouver. The estimate is too absurd, even when tested by answers of these men who made it, to entitle it to a moment's consideration. It is less than a tenth of the valuation made by many of the most respectable witnesses of the United States.

The time occupied at Colville seems, although there is a good deal of shuffling and equivocation about it, to have been one day. The mode of the examinations there, and indeed of all the examinations, is exemplified in the visit to the mill. Applegate says they were at the mill an hour or an hour and a half, and finally states, that he did not know the time (p. 297). Rinearson (p. 343) thinks not over half an hour, but is sure it was more than five minutes.—None of them went into the mill (p. 298, 343, 345). Carson knows nothing about it except what Applegate told him (p. 359, p. 260). The mill was valued at \$500, this being their estimate of the machinery (which they never saw, p. 298); although it was assessed as they knew at \$1,500. The site and water power was not valued at all, although it is worth, even according to Applegate's opinion, \$5,000.

I pursue the subject matter of the fourth ground no further, and proceed to a few observations on the 5th, viz: That the depositions shew dishonesty and falsehood in the Report. The dishonesty of the Report is manifest from the mode of examination at Vancouver and Colville already referred to, and equally so, from the evasive manner in which the Cross-Interrogatories relating to it are answered. But this is not all, the Report assumes to contain a valuation of all the real property claimed by the Hudson's Bay Company at the posts to which it relates, (See p. 271, and p. 357); yet it passes, in absolute silence, the mill site at Colville, valued by Applegate at \$5,000. And the answers given by him (p. 298), by Rinearson (p. 346-7), and by Carson, (p. 357-8,) expose, as shown above, the kind of valuation which was made there. It must be observed of this Report, that it is expressed in the positive and absolute form. It is not said in it that the experts were informed, or that they have reason to believe, this or that, but the statements made in it are unqualified affirmations of fact; and in this form it has been sworn to. Now, it is scarcely necessary to premise, that in so far as truthfulness is concerned, there is little to choose between a man who alleges what he knows to be false, and him who alleges as true what he really knows nothing about. These witnesses convict themselves of both these forms of falsehood. As an example of the latter, in speaking of Walla Walla, they say, (p. 272) "in which year (1860 the old fort was sold by the re-

presentative of the Hudson's Bay Company, for the sum of nine hundred dollars, to one of the original proprietors of the town of Walla Walla." This assertion is entirely untrue; there is not the shadow of a foundation for it; and when under cross-examination by the instructions of the officers of the Company, who were astounded at such a fabrication, the men were compelled to justify themselves, they give for reason (p p. 287-8-9) that *Mr. Johnson, the Attorney for the United States instructed them to put it in*; which they did accordingly, and swore to it. Again, their assertions (p. 274) relating to the possession of Sullivan and others, by permission of the Hudson's Bay Company are simply untrue, and they had only his statement to base their assertion upon.

Of the falsehood of the Report we have a further example in the assertion about the White Mud farm. The expression is:—"The Company ceased to cultivate it in 1860, and J. J. Demers was put in possession." Applegate, on cross-examination, (p. 299) says he obtained his information from Mr. McDonald. Being pressed, he admits that Mr. McDonald may have said merely "was in possession." Not being permitted to escape upon this evasion, he is still further urged, and compelled to produce his notes of conversation with McDonald. His answer, on doing so, will be found under Cross-Int. 143, and is as follows: "Mr. McDonald says that Demers and Wolf built upon the Company's claim, and Demers took possession of the Company's actual property, destroyed some of it, and left some of it standing; all was done under the protest of the Company." This, then, is the information upon which it is affirmed in the Report that Demers was put in possession by the Hudson's Bay Company. There is no escape from this as a direct, wilful falsehood, backed by the solemn sanction of an oath. It is for the Commissioners to consider what faith is to be placed in a Report, or in the depositions of men who have so seriously committed themselves.

It is with a good deal of reluctance that I have yielded to the duty of exhibiting the position in which these men have placed themselves. The Counsel who employed them, has himself felt that their character must be supported, and has obtained from several witnesses a recognition of their respectability. They may, in certain relations, be regarded as respectable men by those among

whom they live ; but the predicament in which they now find themselves, so far from being respectable, is a most humiliating one, and affords a strong illustration of the wisdom of the old rule which would have rejected their report, and all their evidence connected with it. The obvious objection, legal and moral, to such a report is, that the witness becomes pledged, while subject to the influence of one party, and not under oath, to statements from which he cannot afterwards consistently or safely depart. The contrivance by which these statements, first obtained *ex parte*, and afterwards sworn to *ex parte*, is such that the witness, when brought up for judicial examination, must persist in them. He is compelled to swear (to use a familiar expression) through thick and thin, for he must either sustain his sworn report or convict himself of perjury. Applegate evidently felt this, and has endeavored, with great hardihood, to justify the report. Rinearson and Carson have followed him ; but the former seems to have some twinges of conscience about it. His admission that the time taken for examination was too short, already referred to (p. 338,) ; his answers to Cross-Int. 242 and following to 246 (p. 353) in relation to one " clause in the report " (not specified) with which he was dissatisfied, and to making a separate report ; and his attempt (p. 346, 347,) to force a meaning upon his instructions which would excuse the omission from his estimates of the mill at Colville, accompanied by the volunteer declaration that he did not do so " through any design whatever," all betray a consciousness of wrong doing. Carson, however, shews either a singular obtuseness or a desperate resolution to persist, right or wrong, in the Report. His answers relating to the mill site are too curious to be passed over in silence. He states under Cross-Int. 3, (p. 351) that the report contains a statement of the condition and value of *all the real property* claimed by the Hudson's Bay Company at the posts visited by him. He is then questioned as to the reason why he did not value the water power, and a series of most remarkable answers contained on the same page leads to the Cross-Int. 9 : " Do you not think that a water power in use by a party is as much real property as land," to which he boldly answers, " I do not consider it so," and then declares in his next answer that it is not personal property : what it is, he does not venture to assert. This is a specimen of the dishonesty and utterly absurd answers given by this man.

I have little more to say of this Report, or of the evidence relating to it. To exhaust the exposure of its inconsistencies and untruthfulness would require a reference to almost every page.— But there is an answer given by Applegate to Cross-Int. 215, p. 310) to which I invite attention. The question and answer should both be read. His statements in the latter all apply to lands near and on the fourth plain, or far beyond it, and the value there given greatly exceeds the estimate by Mr. Mactavish, which is \$1.25 per acre, for those lands. I note this in order to show how imperfect was the comprehension even of the most intelligent of these three men of the position and true value of the lands which they undertook to value. There are also two other points upon which the same witness has found it unavoidable to state facts favorable to the claimants—such as his admission of the beneficial influence of the Company over the Indians (p. 304); his letter to Dr. McLaughlin on the same page; his answer to Cross-Interrogatory 182, on the following page, and to Cross-Interrogatory 185, (p. 306), but the general character of his evidence is such that I cannot regard any portion of it as entitled to consideration.

GIBBS (Pt. 2, p. 399).—I have placed my notice of Mr. Gibbs' evidence last, as it is remarkable, not only in itself, but from the peculiar position in which he stands, in the double relation of Clerk of the Commission, and an active and zealous agent for the Defence.

In order that the grounds of objection which it is my duty to make to his testimony may be better understood, I must bestow a few words in explaining his former and present relation towards the Company. The first we hear of him is his illegal interference, in 1850, with the schooner *Prince of Wales*, which formed the subject of the correspondence marked C 12 (postscript), C 12a, 13, 14, 15, (p. 396 to 400) and also D 2, (p. 404) in the Documentary evidence. For his conduct in that matter, two motives are apparent; one being his hostile feeling towards the Company, and the other his conflicting interest in an opposition vessel, the *Columbia*. He attempts, in answer to a question prepared by himself for the purpose, (Int. 43, p. 418), to explain away the latter; but the attempt is unsuccessful, and leaves the discreditable fact precisely as it is stated in Mr. Ogden's letter. D 2.

This transaction, of which immediate complaint was made, was censured by his government, (C 15 p. 402) and it is not to be supposed that the rebuke he thus met tended to soften his animosity towards the Company. From that time downward he has continued to be an intelligent and notoriously active and unscrupulous enemy of its interests. On the creation of this Commission he obtained the situation of Clerk, and as keeper of all evidence, records and proceedings connected with it, has had great facilities for aiding the defence. Those facilities, as shown by his own avowals, he has not been sparing or negligent in the use of. He has been, in fact, the chief, and beyond all comparison, the ablest, most active and most efficient of all those employed by the United States for that purpose, with the exception of the learned Counsel who represents it. In proof of his zeal and activity, I refer to the following passages in his evidence in the Puget Sound Agricultural Company's case, which, by his answer to Cross-Int. 656, is made evidence in this case also. These passages begin with the Cross-Int. 112, on page 340 of the evidence in that case, and continue on the three following pages. Nothing can be clearer or stronger than the manifestation of zealous partizanship, in favor of the United States, and unqualified hostility towards the Company and its claim; not merely the actual claim, but to any and all claims by it. He admits that he has usually informed Counsel of the points upon which the witnesses should be examined, and furnished them with notes for that purpose, and has also furnished the questions for cross-examination; has of his own accord, and without instructions, corresponded with persons for the purpose of obtaining evidence, and searched out witnesses and learned what they would testify, reduced their statements to writing, and then informed Counsel of their names and the substance of their evidence—has “been diligent in the matter and attended to it with zeal.” All this, notwithstanding his situation and duties as clerk of the Commission, he has done as he thinks a citizen “should do for the purpose of preventing imposition upon the United States, and actuated by the feeling of a strong conviction of the injustice and exorbitancy of their claim.” The whole of Mr. Gibbs' doctrine with respect to the rights of the claimants is tersely but fully embodied in the following answer to the Cross-Int. 119, (p. 342), in the Puget Sound Agricultural Company's

case. "I have," says he, "always looked upon the Puget Sound Agricultural Company as an illegitimate child of the Hudson's Bay Company, and that the object in forming the Association was to accomplish indirectly what the Hudson's Bay Company could not accomplish directly. In my opinion, before the Treaty of 1846, the Company had no legal existence except as among the partners thereto. It was simply an association of squatters upon public lands of the United States, and acknowledged to be a Company only in that Treaty, whereby the right of the United States to the Territories on the Pacific, north of the 49th parallel, was given up to Great Britain. As to the question whether certain farms situated within the area of this claim have not, by the terms of that Treaty, been granted to this suppositious Company, I have had doubts, which I have expressed." These opinions, he says, were freely expressed by himself and the officers, civil and military, of the Government, the topic being one of general interest in the country, which was not only of importance to the Government, but came home to every man's door. Of the universality of the opinions and interest, and of the bitterness of feeling induced by them among American citizens, there is no doubt, and this affords a ready explanation of the extraordinary statements we have had from this witness, and many others, under oath.

In the deposition given in the Hudson's Bay Company's case, there are passages corresponding with those already cited. The fact of preparing the questions for himself and other witnesses, is admitted and on p. 486, he reiterates his opinion, that the Hudson's Bay Company "were squatters on public lands in the United States," overlooking the fact that the Company was there long before the partition which gave the United States a right of sovereignty, and that their right and the rights of the Hudson's Bay Company were declared and embodied in the same Treaty.

Now, I make no objection to Mr. Gibbs' taking whatever view he thinks proper or expedient of the nature of the rights, or of the claim of the Hudson's Bay Company; nor to his having got as many people who sympathize with him in feeling, as he could, to join in swearing the Company out of their rights; nor least of all, to his adding his own oath to the rest; but I do object to his manifold character of clerk, counsel, agent, and witness; to the un-

fairness, I will use no stronger word, of becoming the official and confidential keeper of the evidence and documents of the claimants, and availing himself of the opportunities of his position, to do all in his power, as the chief agent in defeating their claim. The records were not confided to him to enable him to communicate their contents abroad for the purpose of obtaining adverse evidence; and the claimants are entitled to complain that they have been taken at a disadvantage by having this secret and active enemy in an official and confidential situation. There can be no doubt in the mind of any just or reasonable man, that there is an irreconcilable incompatibility between the office of clerk of a court and that of advocate, and more than advocate, for one of the parties before it. There is always danger from such a double position. It is shewn in this case, by the fact that, in at least one instance, an interpolation has been made, (as explanatory) by which testimony already unfavorable to the claimants, is made still more so (Brooke's Ev., Int. 21, p. 132. And on the same page "\$1 per acre" is printed instead of \$100 which it ought to be. Mr. Gibbs being the keeper of the only record of his own deposition with the others, has an opportunity of making changes which it would be difficult to detect or prove. Of so base an act I do not think he would be guilty, but it is not the less a manifest anomaly, that such a power should be possessed by one who has shewn himself to be an extreme and active partisan. I do not believe that in fairness his deposition ought to be received at all, and if received, it must be regarded with the distrust which necessarily arises from the situation in which he has placed himself.

But it is not only from the diversity and incongruity of the characters in which the witness appears, that his deposition is remarkable. It is equally so in the indiscreet and reckless zeal apparent in his efforts, not only to weaken or reduce, but to overthrow and utterly demolish the present claim. Mr. Gibbs' testimony may be described as joining issue generally upon the claimants' case by an unqualified denial of it as a whole and in all its parts. He gives us not only assertions on matters of fact, but also sworn opinions in matters of law.

He speaks of all the Posts except those at Umpqua and the Flatheads. He also speaks of the trade, of the navigation of the Columbia, the portages upon it, disparaging all, and swearing to the no value of all but two or three of the properties, and to the little value of these.

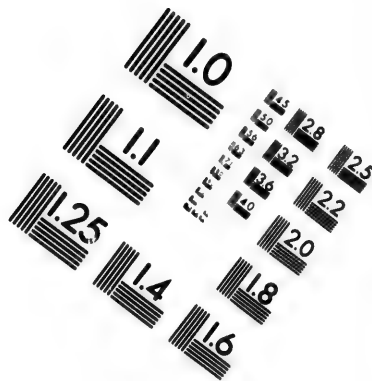
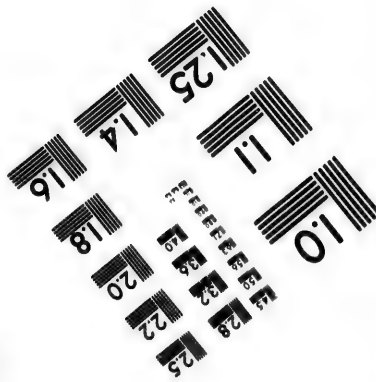
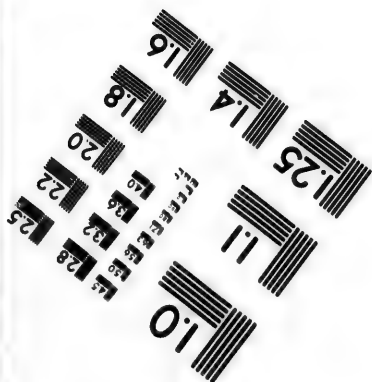
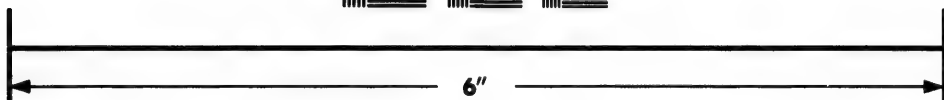
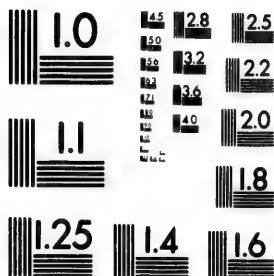


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I do not propose to follow his deposition through all its details. I do not believe it would aid the Commissioners in their appreciation of it, and I feel it may be safely left to a careful perusal to shew its worthlessness as evidence. But I must point out a few examples of rashness of assertion, inconsistency, and self-contradiction, and then in general terms refer to testimony from witnesses for the United States only, which shews how little he knows of the truth, or how little he is disposed to tell it. I venture to affirm that not one of his statements material to the case is strictly true, and that, except with respect to his alleged conversations, chiefly with a man now dead (Mr. Ogden), there is evidence in the depositions taken for the defence to shew that he is never accurate, and for the most part is grossly incorrect. The first example of his recklessness of assertion occurs in the outset of his deposition, (Int. 6, p. 401), in which he says "the site at Astoria was generally considered *the property of the U. S. Government, and held by the Company on its behalf, as it had been captured during the war of 1812*, and at its conclusion finally restored to the U. S. Government." Upon the question of capture and restoration it is not necessary to enter, although the statements concerning them are incorrect. But if correctly stated they only changed the sovereignty, not the fee or right of property which was first in Mr. Astor or the Pacific Fur Company, and passed by purchase through the N. W. Company to the Hudson's Bay Company, by whom it was held uninterruptedly until taken by the military authorities of the United States. From Mr. Gibbs' intelligence and information he could not have fallen into the absurd error of supposing the right of sovereignty and the right of property to be the same thing, and I see no way in which he can escape from the imputation of wilful misrepresentation in thus confounding two things which he must have known to be so different. His answers on cross-examination on p. 423 and following pages to 427, and particularly to Cross-Int. 35, shew how incorrect and inexcusable were the statements to which his unchecked partizanship carried him on this subject. I refer to these as an example of the eagerness with which unfounded assertions are hazarded sometimes upon matters which he ought to know and seems determined to misrepresent, and sometimes upon those concerning which he knows nothing, and is compelled in cross-examination to

take refuge under pretended general conversations, he cannot say with whom. Instances of the latter, among others, will be found in the answers on pp. 442, 443, and 444, relating to a supposed transfer of the route from the Columbia to the Fraser Rivers, about the year 1853; in those on p. 501 and 502, relating to the settlement by servants of the Company on French Prairie; and in others on p. 503 relating to the Cayuse War. The question on this last subject (Int. 38, p. 416) was prepared by himself, as he avows (Cross-Int. 541) for the special purpose of enabling him to make an unqualified statement concerning that war, which on cross-examination he was compelled to admit was mere hearsay upon a matter which personally he knew nothing about. The manner in which he covers rash assertions by "convictions" appears in his answers to Cross-Int. 327 (p. 470). None of these answers are of any real importance in the case, but they shew the kind of witness with whom the claimants have had to deal. The inconsistencies and self-contradictions are not less numerous and striking. One class of these is to be found in the manner in which he frequently changes and almost always intensifies in his testimony, the statements made by him in his Report furnished to General McClellan in 1853, filed with the Documentary Evidence of the defence. I pass them, with a brief reference to one or two. In his report, he says of Okanagan, "*It probably did not pay expenses.*" In his answer to Int. 19, (p. 407), he says, "*It clearly did not pay expenses,*" although in making that answer he had the report and the notes upon which it was founded before him, and says (Cross-Int. 177, p. 447), "that he dictated the answer from them and had no more personal knowledge at the time of examination, than he had then." I refer also to his answers pp. 447, 448, and also 454. His mistakes, forgetfulness, and self-contradictions concerning the Mill and White-mud Creek (see p. 405, 445, and 453), are indicative of the uncertainty of his memory, and that whether from his over-anxiety to sustain the defence, or other causes, its accuracy could rarely be trusted. The addition in his deposition of words not used in the report, such as "*rotted down,*" when speaking of the structures at Colville (p. 404 and 441), and afterwards, "*Mongrel crew, &c.,*" (p. 465 and 466), in speaking of Vancouver, are significant of the spirit which infects all his testimony. These differences are not accidental, for

the witness had this report constantly before him, and had evidently been studying it carefully in preparation, not only for his own examination, but also in his quality of advocate or assistant counsel in preparation for the examination of other witnesses. His motive, therefore, in exaggerating and distorting the expressions used in the Report cannot be misunderstood. His having done so is of little consequence except as a betrayal of embittered feeling and unscrupulous hostility; for the report, which is even more hostile and superficial than one-sided official reports usually are, is for the most part equally unreliable with the deposition. But besides these departures from his report, there are palpable self-contradictions and misrepresentations apparent upon the face of the deposition itself. I

request attention to his declaration (Int. 9. p. 401), that some remarks of Mr. Ogden left on his mind the impression that Cape Disappointment was his own private claim. These remarks are admitted on page 428 (Cross-Int. 58), to have been made *jocosely*, and the witness then changes his ground to another assertion, equally unfounded, that the land was held for speculative purposes. (See Cross-Int. 60). Again, after describing Walla Walla, including the farm (p. 403), he says: "I now *distinctly* recollect the correctness of this description, and that it *was founded on my personal observation*;" but on page 437, in answer to Cross-Int. 112, speaking of the farm, he says: "I do not remember whether we passed it or not," &c. I solicit attention to this answer, and those following it.

Other self-contradictions appear upon a subject which the witness has considered of sufficient importance to render necessary a question prepared by himself, in order to introduce a long and specious justification of his own conduct. The question is the 43rd (p. 418), and is in the accustomed form adopted by the witness when he wishes to bring in irrelevant matter, or get himself out of an embarrassing situation. He wishes, he says, to make a statement touching his acts as Deputy Collector in Oregon, and he goes on with a labored effort at explanation of his conduct towards the Company in the matter of the *Prince of Wales*, and as Collector generally, giving himself, of course, an excellent character, and saying "*unhesitatingly*," that no vexatious embarrassments were thrown in the way of the Company by him. The claimants say

as *unhesitatingly*, that no opportunity was lost by him to throw vexatious embarrassments in their way ; and not only is this proved by documentary and other evidence, but it is further proved that he had both a hostile feeling and pecuniary interest to gratify in so doing. He is unfortunate in his answer in explanation, as he exposes himself in it on two points. First, in his anxiety to cover his acts with some color of authority, he says (p. 419) Mr. Holbrook, the U. S. District Attorney, was present when the order to the master of the *Prince of Wales* was issued. In cross-examination (p. 517) he is made by Cross-Ints. 633-4-5-6, after a good deal of equivocation, to admit that Mr. Holbrook was not then present. Second, he denies, as far as he feels that he safely can, his interest in the opposition steamer, but when closely pressed to say whether his name did not appear on the register as one of her owners, he can only escape by declaring that he does not remember. Of the probability of this failure of memory, when coupled with the fact that her register would be issued by himself officially (p. 518), I leave to the Commissioners to judge, merely suggesting that it is a fair inference from the circumstances, that if the witness could have said "*no*" without exposure to contradiction by the register itself, he would have done so. On page 520 we have another of his questions proposed by himself, and another avowal of mis-statements on two points, relating to the trans-shipment of goods from Vancouver to Victoria. The statements on this subject will be found, made with great particularity, on page 411 and pages 475-6-7, and after the close of his cross-examination, he invites an explanation, and declares he was altogether mistaken on the subject. It is impossible to give any faith to the testimony of a man who one day tells a story with minute details, on matters concerning which he cannot be ignorant, and directly contradicts it the next.

Before leaving the intrinsic features of this remarkable deposition, I wish to direct attention to an ingenious device which is peculiar to it. When, by cross-examination, a truth is wrung out of the witness which shows the incorrectness of a former statement, he comes back, after ample time for reflection, with a question prepared by himself to himself, inviting an explanation. The question is always in pretty much the same form. "Do you desire to make any explanation or modification of any part of your

testimony?" or, in some instances, "of answers to particular interrogatories and cross-interrogatories?" Thereupon it is pretended that since his cross-examination something new has been discovered or remembered which he had forgotten, and which affords him an opportunity of presenting an elaborate piece of special pleading for extricating himself from the dilemma of having stated something which was not true, or denied something which was true.

This kind of thing is repeated in his two depositions. It will be found on pp. 418 and 520, of his deposition in this case, and on p. 344 of that in the case of the P. S. A. Co. Apart from all other objections to this sort of proceeding, it is manifest that cross-examination, as a means of exposing the bad faith and unreliability of a witness, is rendered nearly useless by it.

I close my observations on this deposition by a brief notice of two or three of the striking contradictions by U. S. witnesses of the assertions made in it relating to the several posts. I would premise that the witness has had really but slight means of becoming acquainted with the matters on which he has reported and testified concerning any of the posts except Astoria. For the necessarily superficial and imperfect nature of his knowledge of the property at Vancouver, I refer to his own account on p. 458 and following pages to 465, of his visits there and the extent of his excursions around the fort, and to his answers in cross-examination on pp. 467-8-9—containing his uncertain and conjectural description of the buildings. Most of his statements are speculative and general, and therefore scarcely admit of direct contradiction. But whenever he ventures upon specific facts, decided counter-statements may be found even in the evidence for the defence. I do not propose to dwell long upon these—a few instances will suffice. Thus in speaking of the buildings at Vancouver, in and before 1858, he says (p. 408 and p. 469), "that all the buildings were considerably decayed, and that from the date of the treaty, only the repairs were made necessary to keep them in tenantable order." Whilst General Ingalls in his first deposition (p. 4) says, "the Company made frequent repairs of the buildings and stockade;" and in his second deposition (p. 524), the post of Vancouver was at the height of its prosperity in 1849; and (p. 525) the establishment "as to buildings was more extensive in 1850 probably than

at any other time." General Grant (Int. 10, p. 20) says, that in 1852-3, "the buildings were still substantial." And Captain Howard, speaking of them at the same date, says: "The buildings were in good order at that time" (p. 67). To these, others might be added.

Again Mr. Gibbs says (pp. 409 and 462) that the deposit from the overflow of the Columbia is not fertilizing, while Gen. Ingalls (p. 14) declares that the overflow is beneficial, the sediment being of an alluvial character. The statement made by Mr. Gibbs respecting the roads, that there are a few miles of track about the *character of ordinary wood roads*, at and around Fort Vancouver, is shewn more or less positively to be incorrect by General Ingalls, General Grant, and others. It is pointedly contradicted by General Ingalls on pp. 538-39 of his second deposition. He says in these pages, in answer to Cross-Ints. 65, 66, 67, and 68, that the roads around Vancouver connecting the different places, and down the river, were very good, "good enough to answer any purpose." And in a report made in 1853, mentioned in Mr. Gibbs' deposition (p. 491), it is declared that "from Fort Vancouver to Camp Wahwaikie, the wagon road, through firs with dense underbrush, is good."

He is contradicted in his statements, or rather his denials of value, in relation to nearly all the Posts. Thus, he says of Walla Walla (p. 403), after describing the buildings, "It is almost utterly valueless except as a station where horses can be kept for the trains." Now Ankeny, a most hostile witness, estimates this post at \$10,000 (p. 44). Another of the same class, Gilpin, estimates it at \$9,000 in 1843 (p. 332-8), and Meek and Terry both speak of it, the former giving an estimate of £1,000 sterling, and the other saying it would cost \$10,000 to build it. These are all gross under-estimates; but they shew the determined spirit in which Mr. Gibbs' declarations are made.

I will add one instance more of these contradictions, and then pursue the subject no further. It relates to the comparative value of the buildings of the Company at Colville and those erected at Fort Colville, in 1859-60, by the American N. W. Boundary Commission. Mr. Gibbs, (p. 406) says the latter were greatly superior both in comfort and stability, and adds, "comparing those buildings, in 1854

with the dilapidated condition of the Hudson's Bay Company's buildings, at the same period, there could be no doubt as to the great superiority, in value, of the former, to say nothing of the difference in the cost of construction at the different times they were erected." In strong contrast with this bold and sweeping assertion, is the statement of Mr. Gardner, a civil engineer, assistant astronomer and surveyor of the Commission, and who was employed in erecting the buildings. His comparison has been shewn to be very unfair to the Claimants; but he says, (p. 203, Int. 5) the buildings of the Company at Colville, are not more than twice as extensive as those of the Boundary Commission, and *probably* of not more than *double the value*. It would be tedious to multiply these instances, which can only be exhausted by following closely through the whole testimony. Reference has only been made to the witnesses for the Respondents; it is perhaps needless to add that those for the Claimants disprove every statement in the deposition relating to any matter of importance to the claim. I regret having been compelled to speak thus plainly of Mr. Gibbs as a witness; and I here leave his deposition, protesting that for the reasons assigned on the foregoing pages, it ought not to be received as making proof, in any degree whatever, in the case.

The long list of witnesses for the United States—not less than eighty in number—has now been gone over. The notices of most of the depositions have been brief and imperfect; a more detailed review of them would have shewn how little there is in the whole voluminous mass which is really entitled to be called legal evidence, or even to exercise any effect in creating a moral probability of truth in the matters to which it relates. No body of testimony could possibly present itself, to which the maxim that witnesses are to be weighed, not numbered, is more applicable than to that produced in the present case. Comparing the witnesses on the one side and the other, those of the Claimants are: first, equal to the others in respectability and intelligence; second, they are, with two or three exceptions, superior in freedom from influences and motives which tend to affect their impartiality and truthfulness; and third, they are, beyond all comparison, superior in the means of knowledge and in perfect acquaintance with the subjects on which they speak. On this last head, the witnesses for the Respondents

are strikingly and almost universally deficient, and no amount of statements, such as they have freely and sweepingly made, can suffice to controvert the close, compact, well-considered testimony of the Claimants' witnesses, given after a long and intimate familiarity with all the details of which they speak. Indeed the comparative credibility of the testimony on the two sides, may be put in a still stronger form. The witnesses for the United States, from the imperfectness of their knowledge, even if they were in good faith, may be mistaken. But the witnesses for the Claimants cannot be mistaken upon the essential facts to which they testify. Either their testimony is true on these facts, or they have fallen into direct and wilful falsehood. Whether the latter is a possible hypothesis, I leave to the consideration of the Commissioners, after a careful perusal of the whole testimony. I have no apprehension of the result, for I am satisfied that, in just and intelligent minds, the balance can incline but one way.

I now proceed to another subject.

RIGHT OF TRADE.

The right of the trade of the Company south of the 49th parallel of north latitude, and its value in 1846 and for several years afterwards, constitute the second branch of the Company's claim which is now to be examined.

That the Hudson's Bay Company had in the region known as Oregon in 1846 a wide-spread and lucrative trade, and that this trade was, not only under the grant from the Crown, but virtually and in fact, exclusive, cannot be denied. The business of the Company consisted chiefly in the purchase of furs and other articles, in exchange for merchandize. For this trade the Posts and establishments already described were maintained over a vast extent of country stretching from the 43rd to the 49th degree of north latitude, and covering about 12 degrees of longitude from the 112th degree west, to the Pacific Ocean; the travelling distance between the extreme posts within these limits, being little less than a thousand miles. For all the purposes of trade the Company held undisputed possession and control of all this great region. Besides the chief trade, it had an important foreign trade, exporting large quantities of provisions, fish and timber, and other articles of commerce. The

annual profits derived from the trade with the Indians before and in the year 1846 are declared in the Memorial to have exceeded £7,000 sterling, but this is much below the true amount, which reached an average exceeding £10,000 stg., or about \$50,000. The value of the entire trade and the loss suffered by its destruction are stated at £200,000, exceeding \$973,000. It was this trade, of which the Company was in the full enjoyment in 1846, that the United States were bound by the Treaty to respect, as making part of its "possessory rights."

The evidence bearing upon the whole subject will be found ample and satisfactory. Much of that already presented relates to it, and goes to shew the magnitude of the interests involved in this branch of the claim. The statements of a more direct character are derived from Mr. Lowe, Sir James Douglas, Mr. Mactavish and Mr. Anderson. The testimony of all these witnesses clearly establishes that the estimate of the Claimants on this branch of their claim is less than the facts would justify.

MR. LOWE says: (p. 11.)—"As accountant at Vancouver, I had "to make up the books for several years, say from 1844 to 1849, "and during these years the balance sheet showed large profits, as "much sometimes as thirty-five thousand pounds per annum." * * At "the time of the Treaty in 1846 the foreign trade was confined to "the Sandwich Islands and the Russian possessions on the North-West coast. The exports to these places consisted of lumber, "pickled salmon, flour, butter, and produce, and in 1848, soon after "the discovery of gold mines in California, an extensive trade in "these articles was opened with San Francisco." Upon cross-examination (p. 25) he states that it was in 1847 that the profits amounted to £35,000 sterling. This comprised the profits of the whole trade on the west side of the Rocky Mountains, as well north of the 49th parallel as south of it.

DOUGLAS.—The next witness, Sir James Douglas, from the position he held in the Company and his long connection with it, is enabled to give evidence of great particularity and value upon the subject of its trade. His account of it is contained in his answers to the interrogatories 3, 5, and 11, and cross-interrogatory 2, in the following terms (p. 50):

"I can state as a well known fact that in the year 1846, and

" long before, the Hudson's Bay Company did carry on an extensive trade in furs, peltries and other articles, with the Indians throughout the whole of that country then known as Oregon, as well to the south as to the north of the 49th parallel of latitude. " In carrying on that trade, they built and maintained many posts and establishments, which were permanently occupied by their agents and servants in and before the year 1846, and afterwards ; " and they moreover kept on foot several hunting and trapping parties, and practically held the complete control of the fur trade of the whole territory ;" and he says : (p. 52) " From 1831 to 1849, I was stationed at Fort Vancouver, and during that period, and up to 1859, when my connection with the Hudson's Bay Company finally ceased, I was intimately acquainted with the Company's business, and can therefore distinctly state that the Company's trade with Indians at their different posts and establishments in Oregon, south of the 49th parallel of latitude, for a series of years extending from 1841 to 1846, yielded an average profit of at least seven thousand pounds sterling annually ;" and,—(p. 58) " I don't think that it varied much from that sum in other years, besides the outlay on buildings and other permanent improvements at the different establishments, which, at the close of each year, was written off the books, or, in other words, carried to profit and loss account. Had this expenditure been carried to capital, as is customary in almost every other business, the profits would have been much larger than the sum I have now stated. I would also observe that the yearly increase of live stock, such as neat cattle, horses, sheep, pigs, &c., &c., at the Company's establishments, were not included, and did not form an item in the annual profits." And on cross-examination (p. 55) he says : " The fur trade was the chief object of attraction to the Hudson's Bay Company, and probably led the persons who established the trade to embark in the business ; but ever since I have been employed on the west side of the Rocky Mountains, the Hudson's Bay Company have been carrying on trade in other branches. They had, for instance, a business establishment at the Sandwich Islands, another at San Francisco, and they exported considerable quantities of grain and produce to the Russian settlement at

"New Archangel. These establishments were all connected with and depended on Fort Vancouver. They also made shipments of lumber and spars to the coast of Chili. The business of the Sandwich Islands was started before I came to Fort Vancouver, that at San Francisco after my arrival there. The shipments of lumber and grain to the coast of Chili and New Archangel were made during my residence at Fort Vancouver."

His answer to the 11th Interrogatory (p. 54) gives an idea of the magnitude of the operations of the Company. "The whole force maintained at the Company's several establishments on the west side of the Rocky Mountains at the period referred to in the query, averaged about 55 officers, and 513 articulated servants, besides a large number of native laborers, whose names did not appear in the Company's books. The Company having a large, active, and experienced force of servants in their employ, and holding establishments judiciously situated in the most favorable positions for trade, forming as it were a network of posts, aiding and supporting each other, possessed an extraordinary influence with the natives, and in 1846 practically enjoyed a monopoly of the fur trade in the countries west of the Rocky Mountains, north and south of the 49th parallel of latitude."

MR. MACTAVISH, whose connection with the Company began in 1833, and has continued ever since in departments which rendered necessary a perfect acquaintance with all its business, fully confirms, in his answer to Interrogatory 3 (p. 197), the account given by Governor Douglas of the extent of the trade and the occupation of the Oregon country for purposes connected with it. He then goes on (pp. 207 and 208) to say:

"The principal trade carried on at the posts of the Hudson's Bay Company, west of the Rocky Mountains, was with Indians for furs, peltries, and other produce of the country. The profits of that trade, at the posts in Oregon, south of the 49th parallel, in the year 1846, and for years previously, averaged more than seven thousand pounds sterling per annum. * * *

"For some years previous to 1846, there was a considerable trade carried on from Fort Vancouver, in the export of lumber, spars, shingles, flour, and salt salmon, to the Sandwich Islands,

" the profits from which trade would average probably, ten thousand dollars annually; there was likewise quite a business between Fort Vancouver and the Russian American Fur Company at Sitka, consisting in the supply to that Company, annually, of flour, wheat, butter, pork, peas, and beef, on which trade there was an annual profit averaging from eight to ten thousand dollars."

The profits of the entire business generally kept up pretty well for some years after 1847. In 1853, owing to several causes, the profits had diminished very much (p. 231). The number of officers employed west of the Rocky Mountains, he states (p. 212) at between 50 and 60, and the number of men over 500, besides Indians employed as laborers and voyageurs.

Mr. A. C. Anderson, after giving on pp. 40, 41, 44, important statements concerning the business and the causes of its decline at certain posts, goes on to say (p. 46) " that the value of the trade, irrespective of the fur trade, so far from having decreased, had not only maintained its position, but even in special years exceeded the original amount. For outfit 1849-50, the balance of profits for the Columbia district amounted to between thirty-seven and thirty-eight thousand pounds sterling, of which I estimate that about twenty-two thousand originated at and around Fort Vancouver. I would likewise explain that in regard to the necessity or advisability of abandoning Fort Vancouver, it was not that the Company were not desirous of continuing the trade, or that the prospects of the trade were not sufficiently encouraging, but arose from the serious outrages and petty annoyances to which they had been for some years subjected."

And he adds (p. 47): " The extension of trade, to which attention has been drawn, was not in consequence of anything arising from the Treaty of 1846, but arose from natural and infallible causes, depending on the gradual settling up of the country. This increase had been foreseen on the part of the Company, and to a certain extent provided for. The cession of Oregon, under the Treaty of 1846, and the consequent negotiation for the transfer to the American Government of all our rights and possessions in their territory, retarded all further proceedings; subsequent events still further interfered."

It is in evidence that before any decline in the fur trade as a

natural and necessary consequence of the increased settlement and civilization of the Country, that trade was forbidden by the authority of the United States and was moreover destroyed by its wars with the native tribes. But the buying and selling of furs was not its only business, and if the Company had been left unmolested and its rights had been respected its whole trade would have changed with the changing circumstances of the Country and have become in its new form even far more profitable than in its old.

It would seem scarcely possible in face of the intelligence, position and complete statements of these four witnesses whose evidence on the trade of the Company has been in part cited, to doubt its extent and value, and it may be deemed superfluous to bring specially under the attention of the Commissioners, the additional proof derived from the testimony obtained in England. That evidence was taken by the consent of parties. The examinations were not conducted by way of interrogatories and cross-interrogatories written down, but the witnesses gave their statements upon such points as were verbally suggested by the counsel on either side. The evidence of Mr. ~~Roberts~~, the accountant and book-keeper of the Company for fifty years, is to the following effect: "I think the £7000 mentioned in the Memorial of the Hudson's Bay Company, prior to 1846, is considerably less than the amount actually received in the accounts shown." In confirmation of this testimony a statement of profit and loss for ten years, beginning with 1836 and ending with 1846, is extracted from the books and produced, by which it appears that the average annual profit at trading establishments within the Oregon territory, during that period, was very nearly £11,000 sterling, and the other statements filed (See Ev. of Resp. pt. 3 p. 192 et seq.) shew no diminution for four or five years afterwards; the causes of ultimate decline not having then attained in full their development and activity. It must be observed that all the expenses for building, improvements, and repairs, were borne by the profits, and that a large amount must therefore be added for these, to the £11,000, stated as the annual money profits, in order to make up the true yearly result of the business. In presenting the evidence on this article of the claim, to the notice of the Commissioners, I have made only such extracts as bear pointedly and in a compact form upon the subject.

Harris

But it is not to be overlooked that, besides those passages, there is a body of indirect and general testimony, which in the aggregate, establishes incontestably the great extent of the trade and a probable value which, although unnamed, must very far exceed that which has been specifically claimed. These passages, sometimes relate to the operations of the Company as a whole, and at others to single posts. They will be found under the following references ; Lowe, Interrogatory 38, p. 16 ; A. C. Anderson, Interrogatory 16, p. 36 ; Interrogatory 23, p. 37, Cross-Interrogatory 4, p. 41, Re-examination, Interrogatory 4, p. 49 ; Douglas, Interrogatory 5, p. 56 ; McKinlay, Interrogatory 9, p. 75, Interrogatory 19, p. 78, Cross-Interrogatory 5, p. 87 ; Mactavish, Interrogatory 4, p. 200, Interrogatory 16, p. 212, and go the full length of confirming the statements of the witnesses as to specific amounts. Indeed, the whole tenor of the evidence, shewing the extent of region covered, the number of establishments and the large body of men employed, (there being upwards of 200 at Vancouver alone) leads irresistibly to the conclusion that there is no exaggeration in demanding for the value of their trade, and the loss suffered by its destruction, the sum specified in the Memorial.

NAVIGATION OF THE COLUMBIA RIVER.

The rights of the Claimants, upon which this branch of their claim is founded, are defined in specific terms by the Treaty of 1846 contained in the Second article, which is erroneously cited in the Memorial as the Fourth. The convention of 1863, does not formally include this article, or the rights secured by it, among the matters to be submitted to the Commissioners. It mentions and recites the 3rd and 4th articles, and provides for the appointment of Commissioners to decide upon all claims arising out of them. Whether the Commissioners will deem themselves entitled to decide upon the right of navigation under the second article as a distinct and independent branch of the claim, is for their consideration. It would without doubt be highly desirable to do so in order to terminate categorically all the questions involved in the present controversy. Whatever they may hold, however, on the subject of their jurisdiction, it is manifest that the Hudson's Bay Company possessed under the 2nd article of the Treaty a substantial and most valuable right—

and it is my duty to submit the claim founded upon it, in order either that due compensation may be awarded for its loss, or that it may be distinctly declared to be *ultra vires* of the Commission. In the latter case it will remain unsatisfied and untouched, as a subject of future negotiation and indemnity.

If the opinion of the Commissioners should be that the disposal of this right, as a distinct and independent ground of claim, lies within the limit of their powers, then it is to be so valued, as a perpetual right of navigating the Columbia; not only for the purposes of its own trade, but as including the larger right of owning and navigating vessels for the general transportation of passengers and merchandize upon equal terms with citizens of the United States, and this with the security that the portages along the line of the river must be kept free and open to its use. The language of the article will admit of no narrower construction, and the enormous value of such a right will appear by reference to the testimony.

But should the opinion as to jurisdiction upon this point be adverse to the Claimants, there is another view of the subject upon which no doubt can arise as to the authority of the Commissioners, and which it is convenient to state before presenting the evidence of value. Assuming the alternative that the right cannot now be dealt with as a distinct, independent ground of claim under the 2nd article of the Treaty, it was nevertheless a *possessory right* giving an enhanced value to all the other possessions of the Company; and in settling an award for them, this great element of value must not be lost sight of.

In either view of the claim there is abundance of evidence to shew how great the importance of this right is, and that it is difficult to limit its appreciation. The sum at which it is estimated in the Memorial is £300,000 stg., equal to \$1,460,000. The actual value of it is much more at the present time, and its progressive increase hereafter cannot be easily estimated. The terms of the 2d article are, that "From the point at which the 49th parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company and to all British subjects trading with the same to the point where the said branch meets the main stream of the Columbia, and thence down the main stream to the

" Ocean, with free access into or through the said river or rivers, " it being understood that all the usual portages along the line " thus described shall in like manner be free and open. In navi- " gating the said river or rivers, British subjects, with their goods " and produce, shall be treated on the same footing as citizens of " the United States."— It will be observed that under this article an unrestricted right of navigation of the Columbia from the 49th parallel to the Ocean, is secured to the Company; and by a careful wording, the portages along the line of the river are made free and open. This latter consideration is of especial importance, as will be hereafter shewn in speaking of the obstructions which the Company has suffered in the exercise of its right.

It is proper here to notice the references contained in this article to others besides the Hudson's Bay Company. " The navigation," says the Treaty, " shall be open to the Hudson's Bay Company and to all British subjects trading with the same." This language imports that the right reserved was for the benefit of the Company alone, it is not extended to any class of persons other than those, whose business is solely with and for this body. It, therefore, and it alone, is in a position to relinquish or transfer this right; and if, as probably will be contended, it were true that the transfer of all the posts will necessarily involve such relinquishment, the Company is entitled to compensation for it as making a part of the value of these, and of its business. I refer to the opinions of some distinguished jurists of this country upon the character and extent of this right. Mr. Webster says (see pamphlet of opinions, p. 7): " in my opinion the reservation " of the right in the Oregon treaty to navigate the Columbia " river enures to the benefit of the Hudson's Bay Company " alone. The object was not a general grant of privilege to English " commerce or English subjects generally." Mr. Stanton says (p. 24): " This right therefore belongs exclusively to the Hudson's " Bay Company, to be enjoyed for its benefit, by British subjects " trading with it, and like any other exclusive right may be surren- " dered or transferred to the government of the United States so as " for ever to exclude all other claims. It is also perpetual. The right " being stipulated without limitation of time necessarily attaches for " the duration of the Company's existence," and on p. 28 following up the same subject: " So that the Company having this perpetual

"existence at the date of the Treaty, with exclusive privileges limited to a specified time, but not essential in any degree to the right claimed under the Treaty, may insist on the exercise of that right with all its inconvenience to the American government. * * * *
 "The Treaty right endures while the Company exists; the Company has perpetual existence; by consequence it has perpetual right."

Mr. Bibb says (p. 38): "My opinion is that the article (2nd) does not extend to British subjects generally, but is confined to British subjects specially, who are of the Hudson's Bay Company, their agents, factors, and servants who are trading with the Company by their special permission and license," and again, "the Hudson's Bay Company may elect to release and assign to the United States, and abandon all right of themselves to navigate and all right to license others to trade with them by navigating the Columbia river in so far as it depends upon that 2nd article, and by such release the right of navigating the Columbia river will be extinguished." Mr. Coxe's second opinion (p. 46 and following pages) treats particularly of the right of navigation, and although I do not concur with him in all his conclusions, it is an able exposition of the whole subject.

The evidence of the value of the right of navigation will be found in the depositions of Messrs. McKinlay, McDonald and Mac-tavish, and of Mr. Bradford, formerly Vice President of the Oregon Steam Navigation Company on the Columbia river. Mr. McKinlay says (p. 100): "The importance of the navigation of the Columbia river to the business of the Company, and as a means of communication, was very great; it was almost an absolute necessity to them, as without it they would be compelled to transport their goods by horses, which would have destroyed all the profits of their trade. Without the river, in my opinion, they would not have come into the country at all to commence their business, nor have carried it on with any hope of success. The river being useless for navigation without the free use of the portages, the importance of their being always free and open must be apparent."

Mr. McDONALD (p. 160) says: "The river is navigated between the White Bluff and Celilo, by steamers carrying from 100 to 200 tons of freight, and numbers of passengers, three times a week both ways to Wallula. Cabin passage from Wallula to Portland this

"summer, steamboats and railroads and meals included, was \$20.
 "The rate of freight from Portland to Wallula, \$32 per ton; to
 "White Bluff, \$55; in 1860, \$55 per ton from the Dalles to Wal-
 "lula."

MR. MACTAVISH declines naming any specific sum in valuation of the carrying business on the Columbia river, but gives the following answer to the 27th Int., p. 220, 221: "It is impossible for me
 "to say what the value was of the business, in 1863, of carry-
 "ing freight and passengers on the Columbia river but it must
 "have amounted to a large sum, and must now be something
 "much heavier, the traffic having increased greatly in conse-
 "quence of the discoveries of gold in the country in the interior of
 "the Columbia, east of the Cascades; the number of steamers em-
 "ployed, together with the railroads at the Cascades and Dalles, shew
 "that the business must be profitable, in order to allow an interest on
 "the increased amount of capital employed in carrying it on. To the
 "Hudson's Bay Company, the right to carry on a similar business on
 "the Columbia river, would be of incalculable value, and it is quite
 "out of my power to name a sum which I should consider an equi-
 "valent for their quietly giving up that right."

The most direct and important proof, however, of the magnitude and value of this carrying trade, is to be found in the deposition of Mr Bradford, who has been engaged in it since the year 1850. He was formerly Vice-President, and is now a director of the Oregon Steam Navigation Company. According to his statement, (p. 245, 246) "the Company now owns some twenty steamboats. For
 "the past two years the freight from the mouth of the Willamette
 "river up the Columbia is a little rising 20,000 tons a year; passen-
 "gers passing over the route numbering about 100,000 per year. I
 "know the amount of receipts, but don't think it proper to disclose
 "them. The capital stock is two millions of dollars, and the roads
 "and equipages cost in the neighborhood of \$800,000. Since
 "the organization of the Oregon Steam Navigation Company
 "in 1860, the highest rates of freight per ton have been \$60
 "to Wallula, and \$120 to Leweston, and for passengers \$18 to Wal-
 "lula, and \$30 to Leweston, and now freight is \$35 to Wallula per
 "ton, and \$60 to Leweston, and for passengers to Wallula, I
 "think is \$15, and \$22 to Leweston. For passengers, \$5 to

“ the Dalles and \$15 to the Umatilla, and for freight, \$15 to the “ Dalles and \$30 to the Umatilla, per ton.”

The witness declines to disclose the amount of receipts, and he could scarcely be expected to do so, but we have *data* enough in his answer to enable us to form an idea of the enormous sum to which they amount. This sum, by a rough calculation, cannot be less than \$2,000,000 annually.

It is, I apprehend, unnecessary to say more with respect to the evidence of value. But beyond this evidence it may be suggested that the Columbia river is the great highway for communication with Idaho, Montana, and the mining establishments of that great and rapidly growing region, and that there are considerations of a large and national character which particularly apply to this part of the Company's claim.

The perpetuation of a right vested in a foreign corporation of the “ free and open” navigation “ on the same footing as the citizens of the United States” of so great a river throughout its whole course in the Territory of the United States, is manifestly objectionable on broad grounds of public policy ; and the importance of obtaining a clear and unequivocal relinquishment of the right, is too obvious to require any observation upon it. The perfect understanding and strong feeling of American statesmen upon this subject are apparent in the decided tone with which the relinquishment of it is insisted upon, as an essential condition in all the negotiations for the settlement of the Company's claims. (See Doc. Ev. F5b, F6a, F6b, pp. 440, 442, 443.) The money value of these larger considerations is of course beyond the scope of ordinary evidence ; it is nevertheless very great and must be assessed upon grounds, and from sources of knowledge understood by statesmen and publicists, and which the learning and experience of this Commission will enable it fairly to appreciate and apply.

In conclusion upon this part of the claim, I would submit—That the Honorable the Commissioners have to determine, first ; whether they can deal with it as one of the three distinct and independent divisions of the rights of the Claimants. If they can, the amount to be awarded is clearly proved to be far beyond that specified in the Memorial as its value ; and nothing less would be a just compensation for its transfer to the United States. If

they cannot so deal with it, then the value of the right, as incidental to the posts, the trade, and to the maintenance of the establishments of the Company, must be added to the value of these.

In either case, the great public considerations alluded to must have their weight in aiding a conclusion as to the amount of any award which involves the relinquishment to the United States of this great and valuable right; which can, under no circumstances, be estimated at a less value than the \$1,460,000 claimed for it.

FOURTH PROPOSITION.

The fourth proposition of the Claimants is—That the United States have not only failed to protect and maintain the Hudson's Bay Company in the possessory rights secured to them by the Treaty of 1846, but by its officers and citizens acting under the authority of its government and laws, have violated and usurped these rights. The consideration of this proposition will be taken up under three distinct heads.

1. Dispossession by the direct acts of public functionaries.
2. Forced abandonment and losses from causes for which the United States Government is directly responsible.
3. The trespasses and aggressions of American citizens, and of persons acting under the American Settling and Donation laws.

The evidence upon the first head is chiefly documentary—confirmed and extended, however, by the testimony of several important witnesses.

The first and, in so far as value is concerned, most important official act, under which the Claimants were deprived of a portion of their possessions, is that by which Colonel Loring declared a Military Reservation at Vancouver. The instrument establishing the reservation, dated the 31st of October, 1850, is produced by the Claimants, and will be found under the designation A 8, (p. 323). It sets off a tract of land in the immediate vicinity of Fort Vancouver, comprising, according to the description given in the instrument, four square miles in extent, subject, however, "to the lawful claims of the Hudson's Bay Company as guaranteed" under the Treaty of 1846. This reservation was afterwards reduced to one square mile (640 acres) which embraced a portion of the most

valuable land of the Company, the Fort itself, and the principal buildings (Claimants Ev. p. 143). It was made by Col. Bonneville, in December, 1853. The documents and correspondence relating to it will be found designated in the list B, of the Doc. Ev. of the Claimants under the numbers 2, 2a, 2b, 3, 3a, (pp. 327, 330), to which the attention of the Honorable the Commissioners is solicited. The letter B 2b, from Messrs. Ogden and Mactavish, is especially important as shewing the carefulness with which the rights of the Company were reserved before this land was finally set off. I cite the following passages :--These gentlemen raise no objection in behalf of the Company, "provided it be done on the full and express understanding that the Company waives no rights guaranteed to it or to British subjects under the Treaty. * * * And if "hereafter, in any unexpected state of affairs in "regard to the Company's rights, it may become necessary for it "to assert its rights to the land described, or to insist upon actual "and exclusive possession of the same, and the removal of the "(military) post therefrom, of course the Company will claim their "privileges, and will regard the proposed action as only a temporary tenancy on the part of the United States, subject to the "requirements of the Company, as its situation and future necessities may compel it to act."

The testimony relating to this occupation by the military authorities is important.

TUZO.—The first of the witnesses, Dr. Tuzo, says (p. 180) : "about the time I arrived at Vancouver," (1853), Colonel Bonneville, the officer in command, reduced the military reserve from four "miles square to one, which included the fort and all the most important buildings belonging to the Company in its environs. Until "1856 the Company enjoyed the undisturbed use and possession of "their property on the reserve, but at that time the military authorities commenced and continued to call in question the hitherto "enjoyed rights of the Company, notwithstanding the frequent and "urgent protests made to Captain Ingalls, the quarter master, by the "Company's officers in charge. Some of their buildings outside the "fort were taken possession of by persons in the employ of the "various military departments. Several were burnt or otherwise "destroyed while in the occupation of these persons ; the Company's

"corralls were made use of at first, and finally altogether removed by the quartermaster's department. The landing jetty on the river was removed, and a large warehouse and wharf erected by the Government on its site. The fences, and some of the head-boards in the Company's graveyard, were removed by some of the soldiers of the garrison at various times, and portions were used as fuel at their quarters. The graveyard became gradually almost obliterated. The authorities ran a fence through it, enclosing a portion within the parade ground, and excluding the rest. The orchard fence was partially removed by the military, and a road was made over the site of a building of the Company's which had been recently removed, apparently for that purpose. During all this period the United States Government continued the construction of buildings and improvements on the reserve, until, in 1859, a sum of between two and three hundred thousand dollars had been thus expended at this post."

MACTAVISH.—The evidence of Mr. Mactavish comes next in the order of the time to which it relates. He says (p. 215): "The Company got on very well with the military for several years, say until 1856, when some misunderstanding arose from the garrison fence being run through the burying grounds of the Company; this was followed by a variety of aggressions of a like nature, such as building a wharf and store at the beach, contrary to the expressed wish of the Company, in the summer of 1857. I left Vancouver in the summer of 1858, and was succeeded in the charge of the Company's business there by Mr. James Allan Grahame; that gentleman had much trouble with the military, who were then under the command of General Harney, who in the spring of 1860 told the Company's representative, in writing, that the Company had no rights whatever to anything on the military reserve at Fort Vancouver, in consequence of which Mr. Dallas, the senior officer of the Company on the North-West Coast, decided on withdrawing from the establishment and abandoning everything, which was done after formally protesting to General Harney with regard to his conduct."

Mr. WARK, an officer of the Company, says (p. 189): "While I was in charge of the fort in the absence of Mr. Grahame, on the 1st March, 1860, I was called upon by Captains Ingalls, Hardie, and

"Smith, and Lieut. McKeever, who informed me that they were appointed by General Harney to examine the Company's fields on the west and south-west sides of the Company's establishment, and to report to him as to the suitability of the land for military purposes. I wrote to General Harney on the same day, protesting against any interference with or encroachments on the Company's rights. On the 3rd of the same month I received a reply to my letter. . . . On arrival of Mr. Grahame, on or about the 25th of March, he wrote to General Harney, claiming his protection, and entering his protest against what had been done. And Mr. Dallas, on his arrival, I think early in May, renewed the protests that had been made by myself and Mr. Grahame, and stated that, under the circumstances, he would feel compelled to withdraw the Company's establishment from Vancouver, which was done about the middle of June. * * *

"On the 12th March, 1860, Government employés, under the superintendence of Mr. Lloyd Brooke, removed the fences of the Company's fields on the west and south-west sides of the fort. On the 16th of same month they burned down a house that had been stored in. On the 19th they removed the hospital and a house which had been in the occupation of the volunteers in 1855 and 1856. On the 20th, Kanaka William's house was burnt, and on the 26th the stable and cow-house were pulled down by them."

The letters referred to by Mr. Wark relating to the subject of the evidence are printed with it; they will be found of record marked B 16a, B 17.

Fort George, formerly known as Astoria, was next taken from the possession of the Company. The letter of Major Hathaway to Mr. Ogden, dated 21st June, 1850, announcing his intention to that effect, will be found under the number B 1. Mr. Mactavish (p. 205) proves that the place so passed into the possession of the United States Government for public purposes.

The third official assumption of lands of the Company consists in the occupation of Fort Disappointment. By a dispatch or order dated 24th February, 1852, that place, with all the lands lying within a mile and a half of the Cape, was selected by the military authorities of the United States for public purposes, and was taken possession of accordingly. The document filed by the

Claimants as A9 establishes this fact. The Cape, with the 640 acres in its immediate vicinity, was then in the possession of the Company. The evidence of the possession is to be found in the testimony of Sir J. Douglas, (p. 54 and 59) and of Mr. Mactavish, (p. 205, 230,) which has already been cited in speaking of the post. Mr. Mactavish (p. 215) makes the following statement: "At Cape Disappointment the government of the United States took possession of the Company's land claim there, without any notice being sent to the Company's representative in Oregon. A light-house was first erected at the Cape, and after that the place has been made use of for military purposes, guns of heavy metal being now in position about the light-house, and the place in Baker's Bay, formerly occupied by the Company's establishment, is the site of officers' quarters; and there are also other buildings there, intended for soldiers' houses and stores." The value of the post is proved for the purposes to which it has been applied by the Government, and the assumption of it by military authority has given to the Company a right to an adequate consideration for it, which cannot, with any shew of reason, be denied.

A far more important place than the last two was the Fort of Walla Walla, abandoned by order of the agent of the United States for Indian affairs in 1855. The circumstances under which that valuable post, with all its improvements and the stock of merchandize, amounting together to the large sum of \$68,529, was lost to the Company, have already been stated in part, in connection with the evidence of the value of the place. The documentary evidence relating to this subject will be found under the numbers 9, 10, 11 in list C, (p. 383-4). The first of them, No. 9, is a letter signed by Nathan Olney, Indian agent, to Mr. Sinclair an officer of the Hudson's Bay Company, in charge of the post, containing an absolute order to leave the country without delay. The second, No. 10, is a receipt from Mr. Olney for ammunition (of the value of \$1,104) taken by him and destroyed. And the third, No. 11, is a detailed account of the goods, amounting in value to \$37,275.62, and improvements valued at \$30,250, abandoned and lost on leaving the post, as ordered by the letter No. 9. These three sums amount together in round numbers to the above named sum of \$68,529.

The specification of particulars in No. 11 is proved by the affidavit of James Sinclair (now deceased) and William Charles, a witness produced by the Claimants. The facts of the order and compulsory abandonment and loss do not admit of controversy, and the affidavit, even without the evidence of Charles, is sufficient proof of the account and valuation. I solicit, nevertheless, the attention of the Commissioners to some passages of his testimony bearing upon the subjects. He says (p. 172):

" Mr. Nathan Olney, Indian agent, arrived at the fort on the 12th
 " October, and next day he flung a quantity of ammunition into the
 " Columbia river, taken from the Company's establishment, for fear
 " of its falling into the hands of the Indians. Mr. Olney had been
 " appointed a special Indian agent for Walla Walla and that section
 " of the country, by General Palmer, the superintendent of Indian
 " affairs in Oregon. Mr. Olney gave a receipt to Mr. Sinclair for
 " this ammunition. Eventually Mr. Olney gave an order in writing
 " to Mr. Sinclair, to abandon the fort and property there, which Mr.
 " Sinclair felt compelled to obey, and we all left on the 16th Octo-
 " ber, arriving at Vancouver late in November. Mr. Sinclair did
 " not wish to abandon the fort and property there, and it was only
 " upon the urgent and repeated remonstrances of Mr. Olney, who
 " had already ordered all the white inhabitants of the Whitman Val-
 " ley, now known as the Walla Walla Valley, and in the vicinity
 " generally down to the Dalles, that he at last consented to aban-
 " don the fort.

" The receipt (p. 173) was made at Walla Walla on the date
 " therein given; the receipt was written out by me, and signed
 " by Mr. Nathan Olney, the Indian agent.

" Mr. Sinclair made out at Vancouver a list of the property aban-
 " doned at Walla Walla, consisting of furs, dry goods, provisions, &c.,
 " amounting to something over \$37,000, and also a valuation of the
 " buildings of the fort, amounting to something over \$30,000, not
 " including in this the value of the ammunition flung in the river,
 " which was worth eleven hundred dollars more—which document
 " I signed with Mr. Sinclair.

" Mr. Sinclair was unfortunately killed by the Indians at the Cas-
 " cades, in the spring of 1856, and Mr. J. D. B. Ogilvy, who was
 " also at Walla Walla when the place was abandoned, is likewise

"dead, having been shot in British Columbia last spring, while holding some position under the Government of that Colony."

After the abandonment of the post, it was occupied by the troops of the United States in 1856-57. This is proved by the witnesses McArthur (p. 68) and Anderson (p. 126, 128), whose evidence on the subject has been already in part quoted. Thus it is manifest not only that the Claimants were compelled by the authority of the United States to relinquish possession of the post, but that possession of it was assumed by that Government, which must be regarded as still holding it, and as answerable for its value, and for all that appertained to it at the time it was lost to the Company.

These wholesale acts of expropriation great as they were, are not all, however, which form the subject of just complaint. A series of letters exhibiting the extent and character of other aggressions, and the earnest but unavailing protests of the Company through its officers, will be found in the documentary evidence of the Claimants (p. 382) under the list B, designated by numbers and letters from 4 to 19, exclusive of B 14. These letters relate to the property at Vancouver. They fully bear out the statements of the witnesses, and their tone manifests the slight regard in which the rights of the Company were held. Through the whole of them indeed, these rights are virtually ignored, and the question upon taking possession of any portion of their lands is not, whether they consent, but whether in the discretion of the officer in authority it will suit his convenience to do so. A shew of courtesy and forbearance is sometimes made, but this is manifestly put upon the footing of an indulgence, and entirely breaks down in the end.

The first of these letters (B 4) is from Capt. (now General) Ingalls, and relates to a corral or enclosure for cattle which had been displaced, and the materials of which had been removed by him or by persons in his service. This beginning of petty aggressions had been before complained of, and the letter called out from Mr. Grahame in behalf of the Company a remonstrance, (B 4 a) in which he says, "I am sorry I cannot in my present position do otherwise than protest most firmly, in the name of the Honorable Hudson's Bay Company, against the evident trespass upon the privileges secured to them by the treaty of June, 1846."

The next attack upon the integrity of the right of property was

begun by another letter from Captain Ingalls to Mr. Mactavish, (B 4 b), proposing to build a storehouse on the land of the Company, and that Mr. Mactavish should give his consent in the form of the proposed agreement marked B 5 c. No allusion is made in the letter or proposed agreement to any form of compensation for the land, and neither in this nor in any other case does the possibility of payment for what was taken seem to have been entertained. Mr. Mactavish being ill, this letter was answered by Mr. Grahame, who declares that he "has come to the conclusion that the idea of government or any other party erecting wharves on land claimed by, "or shifting or removing any of the buildings belonging to the "Company, cannot be entertained." He offers nevertheless to dispose of the store and ground in question, for an adequate consideration. A further letter on this subject (B 5 d) was written by Messrs Douglas and Wark jointly, which contains a strong expression of the feeling of the officers of the Company at that time, upon the subject of the constant aggressions and demands made under the authority of the United States Government; and while positively rejecting Captain Ingalls' proposition, contains an offer to sell the store and grounds in question for \$30,000, or to lease them at an annual rent of \$1500. This letter which was addressed to Mr. Mactavish, was communicated to Captain Ingalls and in his answer (B 6), he says, "the time has arrived for me to take formal action "as to the particular site for the public store house, which I am "anxious to erect on the bank of the river," and after expressing a wish that the matter might be satisfactorily arranged, closes with declaring, "I may as well remark that in any event I shall put up a store house in a proper place." So imperious a declaration of the determination to invade the rights of the Company, was met by a firm protest (B 6 a) from Mr. Mactavish against the threatened trespass; and this called out from Captain Ingalls a very long and elaborate letter (B 7) in which he undertakes to shew that the Company had no right to the soil, and affirms his own right and intention to take possession of and occupy any portion of the land, which he might deem useful for the public service, scouting in almost contemptuous terms, the idea that the Company were to be paid anything for the soil which it held in possession. The letter is very long, and too peculiar in its character, and mode of dealing with

the question, to be divided. It must all be read, in order to see the extraordinary views, under which rights guaranteed by solemn treaty between two great nations, have been regarded or rather disregarded and violated by the officials of one of them. I do not propose to enter here upon any discussion for the purpose of shewing the utter want of foundation for the pretensions and conclusions set forth in this letter; they have been presented in various forms and documents, and I dare say will still be reproduced. The answer to them all will be found in the beginning of this argument, and in the special answer which I may have occasion to make to that of the Counsel for the United States. It is only necessary to say here, that the agreement between Mr. Ogden and Captain Ingalls dated 1st June, 1849, marked A 6, does not in any manner or degree sustain the assumption based by the latter upon it. Mr. Mactavish, in order that no means might be left untried of preventing by remonstrance the usurpation of the land of the Company, transmitted a copy of his letter of protest (B 8) to lieut. colonel Morris, then in command at Vancouver, and received from him (B 8 a) a confirmation of the acts of Captain Ingalls, and a declaration that the letter written to him by that gentleman had his full and entire concurrence. This of course ended the discussion, and the officers of the Hudson's Bay Company, powerless to resist, were compelled to submit to the arrogant and unjust usurpation of their property.

In the following year, in January 1858, another correspondence began, relating to the erection of an arsenal on the lands of the Company. The first letter produced (B 9) is from Mr. Mactavish to Mr. Eckerson military storekeeper U. S. A. It refers to a verbal communication made to the writer, and protests against the erection of the building "as a direct trespass on the possessory rights of the Hudson's Bay Company secured to them by the treaty of 1846." Mr. Eckerson's reply is short and decisive, he says "my instructions emanate from the Department of War, "through the chief of ordnance at Washington City****The Honbl. "Secretary of war has probably in pursuance of law, caused himself to be thoroughly informed as to the justice of any claims upon "the site selected for these buildings."

The letters B 10, B 10a, B 11, B 12, B 12a, relate to certain

buildings of the Company which were pulled down by order of the Quarter Master General. To the remonstrance and protest made by Mr. Grahame, on behalf of the Company, against this act of trespass, Captain Ingalls replied (B 11) by alleging that either Mr. Grahame must have been erroneously informed, "or else was deter-
 "mined to add one more to the list of protests, with which that
 "Company has annoyed us this past year on the most trifling
 "pretexts." He goes on to question whether the buildings referred to
 ever have been used by the Company, and denies that they belonged
 to it. Mr. Grahame's answer (B 12a) to this uncourteous and
 bold denial of right, contains the following expressions: "as far as
 "our title to the building in question is concerned, I need scarcely
 "say that did we not consider it ours I should not have entered
 "any protest against its destruction. If Captain Ingalls will refer
 "to his vouchers for the year 1850, he will find that the same build-
 "ing was rented by himself of the Hudson's Bay Company, during
 "the latter half of that year, as an office for the paymaster, Major
 "Reynolds." This answer is so explicit, and exposes so completely
 the recklessness with which assertions were made in denial of the
 most incontestable rights of the Company, that I abstain from any
 further observation upon it.

In February 1859 it again became Mr. Grahame's duty to
 protest against another trespass (B 13a). The answer of Cap-
 tain Ingalls (B 13b) is in the same spirit of arrogant denial
 of the Company's rights. He takes it for granted, that Mr.
 Grahame regards the protest as an oft repeated formula of no par-
 ticular force or propriety, and adds: "But if you can possibly still
 entertain doubts as to the rights of the Military Post here to lands &c.,
 I will ask you to refer to the published opinion of the Judge of the
 Court held at this place in 1850. The Judge there decided that
 the United States Military authorities were legally in possession."

The letter of Mr. Grahame to Lieut. Wheeler (B 15), relating to
 the erection of a theatre on the Company's land, and that gentle-
 man's answer (B 15 a) present an additional instance of aggres-
 sion, to which the Company were obliged to submit.

The last correspondence of a similar character, took place between
 Mr. Wark and General Harney. The immediate occasion of Mr.
 Wark's letter (B 16) was the removal of one of the enclosures of

the Company, and the declared intention of tearing down a house tenanted by one of its servants. The answers to this letter (B 16 a and B 17) are printed in Mr. Wark's deposition, and have already been noticed. His reply (B 17 a) is a firm and spirited remonstrance against the trespass, and his letter is followed by one from Mr. Grahame to General Harney (B 18 a), which rebukes so directly and forcibly the unjustifiable course pursued by the United States officers, that I present it here for perusal :

SIR,—“ I was much surprised to find on my arrival here on the “ 25th ult., that extensive depredations had been committed by your “ orders on the lands and tenements of the Hudson's Bay Company at “ this place, and that further aggressions were intended, and have “ since been put in execution.”

“ In the name of the Company, I hereby enter my solemn protest “ against this course, claim your protection as the highest military “ authority of the United States at this place, and request in common “ courtesy for the information of the Company and the British Gov- “ ernment, that a copy be furnished me of your authority to dispose “ so summarily of the rights of the Hudson's Bay Company under the “ Treaty concluded in 1846, between Great Britain and the United “ States of America.”

This just and spirited assertion of right was displeasing to General Harney, who answered through Captain Pleasanton (B 18 a), instructing him to state that no claim of the “ Hudson's Bay Com- “ pany to any lands within the limits of the reserve at Fort Van- “ couver is recognized,” and that “ any privileges permitted “ that establishment on the military reservation at Fort Vancouver, “ since the 30th day of May, 1859, have been conceded by the court- “ esy and forbearance of the Commanding General.” And further to communicate, “ that the style of Mr. Grahame's correspondence “ with the General was considered improper and objectionable and “ unless changed would receive no attention in future.”

With this letter the climax was completed, and it is curious to follow the degrees of assumption, from the year 1849, when possession was first taken of the land of the Company at Vancouver by the military authorities, and this last communication. The first step was an occupation reserving the possessory rights of the Hudson's Bay Company, and the buildings were leased from that body

at stipulated rents. Then followed the assertion of a right to take land required for any purpose, which the officer in command might declare to be useful to the public service, including the right to remove enclosures, and to pull down buildings; all without compensation. Next came the formal and elaborate denial that the Company had any right whatever in the soil; soon after a similar denial as to a building, which the officer making the denial had formerly rented from the Company for the United States. And after a series of high handed acts of aggression and trespass, accompanied by derisive and contemptuous answers to the remonstrances made in behalf of the Company, we come at last to this letter from General Harney, which not only denies all right, and places the Company in the position of a waiter upon his tolerance, but makes it a ground of offence that the Company's officer in charge should presume to assert its right, or to complain of the depredations and outrages which it suffered, and had so long suffered at the hands of the military authorities of the United States.

As a matter of course, after this position so offensively assumed, some decided step became necessary on the part of the Hudson's Bay Company; and, accordingly, Mr. Dallas, President of the Council of the Company, by a letter (B 19) dated 10th May, 1860, after citing the offensive declaration contained in General Harney's letter, announced that the Company had but one course to pursue, which was to withdraw entirely from the territory. He re-affirmed, notwithstanding General Harney's indignation, all that had been written by Messrs. Wark and Grahame against the infringement of the treaty of 1846, but in stronger terms, and cast the responsibility upon the government of the United States; holding it liable, as it undoubtedly was and is, for all these unjustifiable acts of its officers, who must be presumed to have been acting under the special instructions of that government. The following passage from this letter of Mr. Dallas sums up so well the sense of the injurious and overbearing treatment to which the Company had been subjected that I insert it here. After detailing the extraordinary course adopted by General Harney, he says:—

“Such are the circumstances, coupled with other aggressions of a similar nature, which compel the Hudson's Bay Company to withdraw from a land which they occupied by treaty right, and which

“ they reclaimed from the wilderness and from the savage ; and
 “ against the hardships and famine of the one and the deadly hostility
 “ of the other, they have, on more than one well-known occasion, pre-
 “ served the lives and the footing in the country of the American
 “ Settlers.”

It has been my design to give enough of this correspondence to shew its essential bearing upon the subject, and that it exposes better than anything else can the spirit and mode in which rights held under the solemn sanction of a treaty, were dealt with by men clothed with authority from the United States government. A full perusal of the letters will render comment unnecessary, for they afford a picture of high handed aggression on the one hand, and of hopeless and helpless remonstrance on the other, which no comment could strengthen. The consequence—whether intended or not, the United States government alone can say—was to drive the Company from the country. As announced by Mr. Dallas in his letter, they withdrew in 1860, abandoning their property at Vancouver, then only a remnant of the extensive and valuable possessions guaranteed to them by the treaty.

2.

The second head under which the subjects of the fourth proposition are to be considered, comprehends the forced abandonments and the losses consequent upon the acts of the United States. The most important of these was the abandonment of the post at Walla Walla, which as has been already seen, was compelled by the order of the Indian agent, in consequence of the war with the Yakima and other Indians. Two other posts were necessarily abandoned for the same cause, without the intervention of any special order, but equally in consequence of the position in which the Company was placed, by the hostilities between the government and the aborigines ; these were Forts Hall and Bois  . The evidence is similar in relation to both. The witness Charles was in charge of Bois   in 1855. After mentioning the expedition of Major Haller, of the United States army, who captured and punished several Indians for the massacre of emigrants in the neighbourhood of Bois  , he says (p. 172) : “ The Major returned to the Dalles in the autumn “ (1855) leaving the Indians in a very excited condition, so much “ so that on departure of the troops, I could not safely remain, so

"I abandoned the place with my three men and got safely to Walla Walla." And (p. 174) "after the close of the Indian war, that country was so unsafe that the Company could not, if they wished, re-possess themselves of the post."

Mr. McDonald says, (p. 162) of Fort Hall, that it was abandoned on account of Indian hostilities with the white population in 1856. It was left because it could not be communicated with in the usual way, which was by way of Walla Walla, and Boisé from Vancouver. Two of the express men of the Company had been killed between Fort Hall and Walla Walla, and the place was abandoned by orders from Chief Factor Mactavish, whose testimony (p. 206) confirms that of these two witnesses.

Mr. McKinlay states (p. 96) that the Company after 1846, could not carry on their trade with the usual profits in consequence of the war between the whites and the Indians.

Dr. Tolmie, in his examination as a witness for the Respondents (Pt. 1, p. 101-2), after stating the causes which compelled the Company to abandon Walla Walla, Fort Hall and Boisé, says (p. 102-3): "The country was in a very disturbed state after the war; the value of Walla Walla was greatly diminished as a distributing point, and as a place for the purchase of horses. Forts Hall and Boisé could not be reached owing to the hostile condition of the Snake Indians; neither of these posts * * * could be thoroughly outfitted owing to the existence of an order from general Clarke, prohibiting the introduction or sale, at any of the interior posts, of ammunition, which is essentially necessary to Indian trade; moreover the Company's post at Walla Walla was occupied by United States troops, long after 1856, and when abandoned by them, it was taken as a donation claim by an American citizen named Van Syckle."

It is to be observed that so long as the Country was under the exclusive control of the Hudson's Bay Company, no war arose with the natives, but with the introduction of the new sovereignty and of a new population, these wars became frequent and dangerous; and the remote establishments of the Company, which up to that time had existed in perfect safety and maintained a kindly and beneficial intercourse with the Indians, became in consequence untenable. The evil of this change fell most heavily on the Company

at Walla Walla, Boisé and Fort Hall ; and the more so as after having once been driven from these places, the resumption of them became useless even if it had been possible. Their relations with the Indians had been broken off. The advantages which these relations gave them, could never be re-established ; and no other advantage could have been expected from regaining a barren possession of these posts, at all commensurate with the expenses and difficulties which they must have encountered in the attempt. Meanwhile a population, hostile to the interests and existence of the Company had increased, and the prospect became more certain, of being at no distant day driven from the country. Under these circumstances, an attempt to resume their property was manifestly not advisable. For as nothing could have been gained by its success, so no right could be lost by declining to make it. If the property was theirs when they were forced to abandon it by the urgent necessities of a state of war and immediate peril, it still remains theirs, and the United States Government cannot in law or common reason have assumed it, or now retain it, either by its officers, or by its citizens claiming under donation or other laws, without giving for it a fair compensation. The claim is as good now as it was at the day of the abandonment, and the transfer of the right of property can only be demanded upon the terms of the treaty, that is to say, for an adequate money consideration now to be assessed.

Before passing to another branch of this subject of aggressions, I must expose, in addition to these acts of the Government leading to direct and immediate expropriation and loss, certain other acts of interference by its functionaries, scarcely less mischievous and injurious to the rights of the Company. These were sometimes by official papers, but more generally by expressions verbally or in letters, declaring that the rights claimed had never existed, or that they had ceased to exist, and setting them entirely at naught ; thus encouraging persons already too ill-disposed, to trespasses and settlement upon the land of the Company, in open defiance of its opposition and warnings. The evidence of all this will be found in several of the documents fyled, and also in many passages of the testimony. I shall first direct attention to these documents, and then to the testimony. The first of them, in order of time, is an extract from instructions given to Dr. Dart, Indian Agent, and published in the Report of

the Commissioner of Indian affairs, in 1850. This extract, which is filed under the designation A 10, (p. 325) is significant. It discloses the determination of the Government of the United States that the Company, notwithstanding the guarantees of the Treaty of 1846, should not be permitted to continue its trade in the ceded territory. "Under no circumstances," says that Government, speaking through its Commissioner, "should the Company be permitted to have trading establishments within the limits of the territory; and if any such establishments now exist, they should be promptly proceeded with, in accordance with the requirements of the non-intercourse law." To what particular law the instructions allude, I am not aware; for I can find none which could properly be applied to the case, and for the purpose contemplated. If any such law existed at the time of the treaty, or was afterwards enacted, it could not restrain the rights secured by that instrument. The treaty constituted the higher law, and if by it a right was guaranteed to a foreign corporation to hold property, and to carry on trade, within the territory of the United States, no municipal law could take away those rights. This, I understand to be so undoubted a rule of public law, that it will scarcely be contested. If it be, I shall be prepared to sustain it, both by argument and authority. From the fact that no direct action was taken upon these instructions for "promptly proceeding" in the manner indicated in them, it is probable that new light was received on the subject, and that it was found impracticable to do so. The Company, therefore, was left ostensibly in the possession of its establishments and its trade, but the process of expropriation by official assumption, and of trespasses by American citizens, seems to have been adopted or permitted, for the purpose of accomplishing, more slowly, but not less completely or less certainly, the desired object of driving this foreign and powerful corporation out of the country without remuneration. No other solution than this can be applied to the whole course of the policy pursued by the Government and people of the United States towards it.

Another official document (C 2, p. 368) is so remarkable as to require a very special notice. It is a letter from Mr. Stevens to Mr. Ogden, dated 20th December, 1853. Mr. Stevens was then Governor of Washington Territory, and Superintendent of Indian affairs. The date of the letter shews it to be connected

with an elaborate, but most one-sided and unfair report upon the value of the property of the Hudson's Bay Company, which that gentleman got up for a purpose, under the instructions of Mr. Secretary Marcy. The report was a piece of unsound special pleading, and the letter corresponds in character with it. The positions assumed in both are—First, that the rights and privileges held by the Company, under the authority of the British Government and Parliament, were worth nothing after the Treaty of 1846 and but for the special stipulation regarding its interests, its possession would have been but a mere trespass. Second, that the rights acquired by mere possession vested no interest in the soil, but a right which existed and was held by mere occupancy, and was lost the moment such occupancy was abandoned. Third, that there is "nothing in the Treaty which secures to the Hudson's Bay Company the right to trade with the Indians;" and, as a consequence of the latter assumption, Governor Stevens adds, that "this practice," that is, the trade with the Indians, "will instantly cease;" graciously according, however, to the Company "six months from the 1st January to settle their affairs." A duplicate of this letter was sent to Dr. Tolmie, who was in charge of the P. S. A. Co.'s establishment at Nisqually. The portions of it which relate to the property and rights of that Company will be noticed in the argument upon its claim.

This letter of Governor Stevens, coupled with its counterpart the report alluded to, is a clear declaration of the policy which I have above stated to be that of the United States Government, and the people of Washington Territory. His bold and sweeping negation of any right under the Treaty worth securing or holding, is sustained by such little show of reason, that a formal answer can scarcely be deemed necessary. I refer, however, to my statement of the rights of the Claimants, and of the grounds on which they rest, as covering the whole controversy. And for a precise and conclusive refutation of the particular pretensions set up by the United States Government through Mr. Stevens, I call the attention of the Commissioners to Sir George Simpson's answer (C 2b, p. 372), dated at Lachine, 22nd March, 1854. This carefully-written paper meets fairly and fully all the points taken by Governor Stevens, and shews how utterly untenable they are. I make no extracts from

it, because it must be read and considered as a whole ; and I respectfully refer the Commissioners to it for that purpose. It is to be observed, that this second threat in 1853, of stopping the trade of the Company with the Indians, like that of 1850 found in the instructions to Dr. Dart, was not followed by any direct official action. However strong the disposition for it may have been, it was no doubt found upon reflection to be a measure too extreme and unjustifiable to be ventured upon. There is, it is true, another letter from Governor Stevens (C 8), dated 9th January, 1854, in answer to Dr. Tolmie's protest (C 7 a) against the views expressed in his former one, in which he (Stevens) re-affirms those views, especially as regards the right of trade, but nothing more substantial seems to have followed.

The opinion of Governor Stevens, which was well known throughout the territory, to be thus hostile to the claims of the Company, must have strengthened greatly the universal tendency to disregard its rights, and to commit all forms of usurpation and spoliation upon its possessions. That such was, in fact, the case is shewn by the testimony. Added to this, were the expressions to the same effect contained in the letters of the military officers, already referred to, and the verbal declarations which those in authority were in the habit of making, in relation to the rights of the Company.—The testimony of Mr. McKinlay sufficiently establishes this. Speaking (p. 96) of the trespassers (jumpers as he styles them) upon the land of the Company, he says: "I know they were encouraged by some of the military officers of the United States." And (p. 99), he answers on cross-examination: "Major Reynolds, and Captain Ingalls, were the officers that I heard justify 'jumping.' I have 'conversed with several others, but do not remember their names particularly. * * * I have heard Ingalls talk about it frequently to myself and others, and Reynolds justified it in a speech 'in Court, where he was acting as a lawyer. This was between '1848 and 1859.'" Mr. Mactavish (p. 214), also mentions the influence of Governor Stevens' enunciation of his opinions, and it cannot be questioned, that the denial or depreciation of the rights of the Company, was a popular and general topic with men in the public service, as well as with private citizens. The weighty influence of the opinions of the former upon the latter, thus supporting them

in their hostility to the Company, and in the acts of spoliation consequent upon that feeling, must, manifestly, have had a most mischievous and injurious tendency upon its rights and interests. I need not, however, dwell longer upon these points which I leave to the consideration of the Honorable the Commissioners; and now pass to another.

Previous to the date of Governor Stevens' letter, great and continued obstructions had been thrown in the way of the Company in the navigation of the Columbia River. The clearness of their right to the free navigation of that River, for such purposes as might suit the interests and convenience of the Company, one would think could scarcely be doubted, after a perusal of the second and third articles of the Treaty. I have already endeavoured to shew that such right admits of no reasonable question. Nevertheless, the active zeal of the officers of Customs at Fort George or Astoria, enabled them to read the articles by the light of new rules of interpretation of International Law, and we find accordingly, that so early as the year 1850, difficulties were raised, bonds required, and restrictions imposed upon the right of free navigation, which were in direct and palpable violation of the spirit and letter of the Treaty. The documents which show this will be found filed in the list C, (p. 396) marked 12, 12a, 13, 14, and 15, including its enclosure, and one under the designation D 2, (p. 404). All these letters refer chiefly to the "Prince of Wales" Schooner which belonged to the Hudson's Bay Company, and while they exhibit the particular unlawful vexations of which that vessel was the subject, they also betray the spirit in which all questions involving the interests of the Company were dealt with by the officials of the United States. The letter D 2 from Mr. Ogden to Sir George Simpson, affords a clue to this particular transaction, and a sample of the motives and course of conduct with which the servants of the Company were constantly obliged to contend. I commend it to the special perusal of the Commissioners. It is not necessary to recite here the contents of the letters referred to. There are, however, in one of them, certain expressions which I wish to bring more particularly under notice. It is the letter from Mr. Webster, then Secretary of State, to Mr. Crampton, British Minister at Washington, inclosed in the letter C 15. It acknowledges a "communication relative to the case of the British Schooner "Prince

"of Wales" and *other vexatious interferences* on the part of the "American authorities with the trading pursuits of the Hudson's Bay Company in Oregon," and after stating the complaint made says that "the Collector, *misapprehending the law*, gave the orders to which exception had been taken," referring to the document C 14 signed by the Collector and Deputy-Collector. The letter then alludes to certain instructions which are stated to have been given, and concludes with these words: "These instructions, it is presumed, will effectually prevent in future, any improper interference on the part of the officers of the United States in the trading pursuits of the Hudson's Bay Company." This document is of consequence, as indicating the view taken, officially, by a statesman and jurist—perhaps the greatest that America has produced—of the important right of navigation secured by the Treaty; and it administers in unqualified terms a merited rebuke to the subordinates who had taken upon themselves to violate it.

In conclusion upon this subject, I would now refer in general terms to the fact that the portages on the Columbia, which were indispensably necessary to the connection of the navigable portions of the River, and without the free use of which the transportation of the goods of the Company to the Upper Posts was impracticable (Mac-tavish p. 210 211), have been taken possession of by chartered Railroad Companies holding their rights under Local Statutes, or Statutes of the United States (*). The grants to these Companies

* 1. An Act to incorporate the Cascade Railroad Company.

Statutes of Washington Territory, 1858, page 37.

Amended by an Act of December 20th, 1859.

Laws of Washington Territory, 1859-60, page 121.

2. An Act to incorporate the Columbia Transportation Company of the Territory of Washington.

Session Laws of Washington Territory, 1861-62, page 110.

3. An Act to incorporate the Washington Railroad Company.

Statutes of Washington Territory, 1864-65, page 108.

4. An Act to incorporate the Middle Cascades Portage Company.

Statutes of Washington Territory, 1864-65, page 115.

Amended by an Act December 9th, 1865.

Laws of Washington Territory, 1865-66, page 178.

5. An Act to incorporate the Klickitat Portage Company.

Statutes of Washington Territory, 1865-66, page 172.

6. An Act to grant the right of way to the Cascade Railroad Company through a Military Reserve in Washington Territory.

United States Statutes 1865-66, page 31.

are virtually monopolies, and it is no longer possible for the Hudson's Bay Company, to make the same use of the portages which it formerly did, and without which the right of navigation is comparatively worthless. The evidence of Mr. Mactavish as cited bears strongly on this point; and that of McKinlay and McDonald, (p. 102, 161), indicates the importance of the portages. The fact of the obstruction is shewn by two at least of the witnesses for the Respondents. One of these, Ainsworth (Pt. 1, p. 1), shews the great value of the traffic, and consequently of the right of navigation of the Columbia; and proves unwillingly that the free and unobstructed use of the portages by the Hudson's Bay Company has been infringed. Cain, also, whose deposition has been noticed in a former page, proves on Cross-examination (p. 246 to 250) most reluctantly, but sufficiently, the obstruction and indeed prevention of the free use of the portages; it being apparent from his statements, that as a matter of fact, all the lands upon which the landings and portages were, have been granted by the United States, to Railroad Companies or to private parties in whose possession they now are.

The inevitable conclusion is, that the United States have given away to third parties, rights and privileges of great value, in a manner which has deprived the Hudson's Bay Company of the benefit and use of the rights secured to them by the treaty, of, at least, equal value.

3

The prosecution of these details, which is unavoidably wearisome, brings me to the 3rd head of the 4th proposition. Under this head I propose to present a portion of the evidence of trespass and spoliation by American citizens assuming to act under Land and Donation Laws, to which they were encouraged, as has already been shewn, by the declarations and acts of public functionaries, civil and military.

So much of the land of the Company was taken, and by such a multitude of persons, that only the larger and more aggravated cases of aggression can be noticed; for the others, reference must be had to the details given in the testimony.

The beginning of these acts of trespass, it is important to note,

was shortly after the date of the Treaty. Up to that time the possession of the Company had been free and unchallenged (Mac-tavish 201, 216). In 1849, there were twelve or fourteen settlers according to the statement of the witness Crate (p. 114, 115). Mr. Lowe states that he frequently visited Vancouver after 1850, and in general terms that he found a great many settlers claiming and occupying the lands of the Company, which as it appeared to him had ceased to carry on farming operations, most of the land having been squatted on; and the same had taken place with the stock ranges.

Mr. A. C. Anderson (p. 39), proves that in 1851 when he returned to Vancouver, after an absence of several years, he found a portion of the land formerly enclosed and cultivated by the Company, occupied and built upon by a man of the name of Short, and (p. 45) he says much property at Vancouver "was wantonly destroyed, and it was only within the immediate limits of the Fort that it was found possible to make restorations to prevent decay. "I say within the immediate limits of the fort, because outside there was no protection in fact against the outrages of unprincipled persons around, who, either for selfish purposes, or from wanton motives inimical to the Company, constantly sought to destroy or deteriorate the value of the property. Of this I have given an instance already, in describing the destruction or removal of the fence which had been built for confining the wanderings of the herds of cattle. (See p. 41). The large herd of cattle which had formerly roamed upon the pastures had been, some removed to positions of greater security, others branded and stolen by squatters, some wantonly shot, and the remainder driven into the woods, where, from want of the ordinary herding, they gradually became wild."

The testimony of Mr. McKinlay (p. 82) shews fully the extent of these usurpations of the land of the Company. Referring to the years 1849 and 1850, he declares, "The whole of the Lower plain was occupied by others; the 1st, 2nd, 3rd, and 4th, I think, were all occupied by others. The Fort Plain, with the exception of the fort and its immediate outbuildings, the orchards and two or three hundred acres of enclosed lands, was in the occupation of settlers and the military who were camped and erecting buildings on the

"land back of the fort. On the Mill Plain there were some settlers on the farther end. The Company had land there under cultivation ; I think there was as much fenced as in 1846, but the fences were not in as good condition. The cattle of the Company were nearly all destroyed or driven off. There were very few cattle and some sheep, the cattle range was very much interfered with ; and not much left but woods."

But the fullest and most particular account of these trespasses is to be found in the deposition of Crate. He says (p. 108), "When I left Fort Vancouver in 1843, there were no persons claiming any part of the Company's land ; when I returned in 1849, there were a few settlers on the lands, claiming under the Donation Land law. I returned in November, 1849. * * * After I arrived there, and up to 1853, the great body of the settlers came in. They took about all the Company's land up to the military reserve, which I think was about one mile square ; some of their claims would come within the mile of front on the river bank. The military reserve included the Company's fort, and almost all the buildings in the immediate vicinity. Most of these men who took possession of claims upon the Company's land, I believe, were Americans, and some of them were foreign born. From their statements, and from their living upon the claims, I believe them to have been claiming to hold the land under the Donation Law of the United States. I know that I accompanied some of them to the Land Office to take steps to secure their claims under the Donation Law ; others I saw at Oregon City, waiting to prove up under the Land Laws."

He follows this statement with a careful specification of the tracts taken by different persons whom he names (p. 109 and two following pages) and adds : "There were other settlers who occupied all the small pieces of land suitable for settlement not included in the larger plains I have mentioned, wherever water could be found. In taking up all these claims more or less woodlands were included, either at the choice of the settler, or to make up the amount of land he claimed. The whole of the Company's land claim was substantially taken up by settlers, except some places in the woods ; each of these claimants took all of the Company's buildings, fences and improvements which happened to be on the particular piece of land appropriated by him, changing the fences whenever

"it suited their convenience. As to particular acts, I recollect some time about 1856, when the saw mill was not running, but was in my charge, J. E. Taylor, in my absence, took possession of the mill, and set it running without sawing, in order to make the mill run easy, and spoiled an iron spur wheel twenty feet in diameter. I ordered him off several times; he told me the Company had no right to it, as it was on his claim, and he had a right to every thing on his claim. The officer in charge of the Company got out an injunction for some purpose, but Taylor remained in possession and sold it to one Love, who was in possession when I left the country."

"A town was laid out on the Short claim directly below the fort, some time between 1850 and 1853. Before I left, the town had grown to quite a considerable size."

"The Company sowed a good deal of land above and below the fort with timothy grass, it was several years before it came to anything. Above the fort, Ryan and Nye had this land, and below Mrs. Short, Duchenay, and Mrs. Mellick, Petrain, Proulx, and Laframboise; these people cut large quantities of timothy hay on these lands, and sold in the summer for twenty-five dollars per ton, and in the winter at fifty dollars per ton; one winter, when snow was deep on the ground, it could not be bought for less than one hundred dollars per ton."

On the same page (111) it will be found that the County Commissioners of the county of Clarke sold town lots on that portion of the land of the Company occupied by Short. Other parts of this testimony of Crate to be found on the pages 112, 114, 115, 116, have an important bearing upon the same subject.

Dr. Tuzo's evidence is only less particular than Crate's which it fully confirms. It will be found on page 182 in answer to Int. 7. I do not quote it here, as after giving the statements of the latter, it is unnecessary to do more than to request the attention of the Commissioners to it. I also refer to the testimony of Mr. Mactavish on pp. 201, 203 and 220. He says (p. 220), "I should estimate the loss sustained by the Company, in consequence of the occupation of their lands by squatters and others, commencing with the year 1850, owing to which the Company's cattle all disappeared and other damages were incurred, at from \$40,000 to \$50,000 annually."

In addition to these witnesses, reference may be made to general Ingalls' answer to the 10 Int. of his first examination (p. 3), in which he says ; " In 1849, the Company was in occupation of enclosures" &c., described in former answer. "They were gradually absorbed by increasing settlements, until at last the occupation was reduced very nearly to the stockade, when the Company were tired."

The evidence above adverted to, all applies to the lands at Vancouver, but it was not with reference to these alone that the Company had cause of complaint. Mr. McDonald shews that a similar course was pursued at Colville. Speaking of that post, he says : " There is a direct and indirect interference. The direct interference is taking possession of the White Mud farm, and the taking possession by the County of our wagon roads to our mill, and over our portage. The indirect interference is, that fences and farms are established where our herds used to graze freely, and no person turning them away, and all sorts of causes not easily described. The whole of the White Mud plains and mowing grounds are now claimed by settlers there. There are two or three settlers on the Fort Plain that have not yet interfered with us much. On account of the loss of the White Mud plain, we cannot well breed our own beef, as usual ; and our spring and summer pasture grounds are eaten up by the stock of the rest of the settlers, and we cannot winter our horses there with safety at all. In consequence of all this the loss is very considerable, and I will not now estimate the amount."

I have deemed it my duty to make these extracts and references in order to exhibit the extent of the aggressions complained of, and the apparent predetermination with which they were made. They were, in fact, not the mere isolated acts of individuals, but a movement sustained by the whole population, and which no effort of resistance on the part of the Company could by any possibility arrest.

What with the open usurpations and hostile opinion of the military authorities, backed by public documents and the official correspondence of the civil functionaries, and the strong current of popular feeling everywhere manifested in consequence, by the press, by speeches in Court and at public meetings, and taking a practical form in the trespasses of a multitude of persons, it is evident that

any resort to the Courts of Law for protection and redress, would have ended in defeat and derision. If verdicts could have been obtained, which was not in fact possible, judgments could not have been enforced. Some few attempts were made by the Company in that direction, but they proved abortive, and only made matters worse. The will and necessities of a rude pioneer population were stronger than respect for justice or the restraints of law. In fact, judges and juries, sheriffs and sheriffs' officers, made part of a community saturated to the very core with feelings of the bitterest animosity towards this foreign corporation, and fully resolved that it should not hold its posts in the country. It would have been an act of folly, and of ruinously expensive folly, for the Company to have brought suits against the army of trespassers, by which their rights were thus invaded, with the countenance and support of all which constituted the moral and physical strength of the country. This condition of things was notorious, and is apparent in the whole history of the Company from the treaty of 1846 up to its being finally driven from Vancouver in 1860.

As to evidence on the subject, it is neither rare nor uncertain. Much is found in the admissions even of the witnesses for the United States. Of the Claimants witnesses there are several who speak directly to this point.

Mr. LOWE, (p. 22) speaking of the effect of the trespasses upon the farming and pasturage land says: "There appeared to be no help for this state of things, as I believe the Law Courts of the country declined to interfere in any way, considering it probably a matter to be arranged between the Governments of Great Britain and the United States."

Mr. A. C. ANDERSON on being asked (p. 48), why there were no prosecutions in his time (from 1851 to 1854) at Fort Vancouver, answers: "From the single reason, as I conceive, that it would have been bootless to institute them."

Mr. MCKINLAY on being asked (p. 96), why the Company did not prevent their old servants and others from jumping their lands at Vancouver, replies: "My own impression is, that they could not prevent the jumping; soon after the treaty they began to jump, and were soon too numerous for the Company to go to law with besides, most of them, being irresponsible, might be turned out one

"day, and be back the next; further than this, I know they were encouraged by some of the military officers of the United States. "It would have been useless for the Company to have gone to law."

Mr. CRATE (pp. 111 and 116), speaks of an injunction against Taylor, who had taken possession of the Company's mill, but adds, that Taylor "remained in possession notwithstanding, and sold to "another man."

Mr. MACTAVISH makes the following statement on the subject of prosecutions (p. 216) : "During the term of the Provisional Government of Oregon, proceedings were instituted in the local Courts against Amos Short, who, soon after the treaty of 1846, squatted on the Company's lands immediately below Fort Vancouver. It was only in the autumn of 1850, however, that the first Court was held in Clarke County, in which Fort Vancouver is situated, under the Territorial Government of Oregon; by which time there were a great many squatters on the Company's lands, and whose opposition to the Company was such, that it was impossible to have got an impartial verdict from a jury in a case where the Company's land was concerned; it was therefore not considered advisable to try such matters in the local Courts, so that in reality there was no protection for the Company in these Courts, although the Company paid all taxes, and did all they could to support law and order in the country in every possible manner. The Company did everything that could prudently be done to maintain their rights in that country, and were placed in a very difficult position for the want of a proper definition of their rights under the treaty. Some proceedings were also taken by me against Taylor and Ryan, before mentioned, as squatters, but with little or no effect."

The last witness to whose statements I shall particularly advert in this connection, is Mr. Farrar. As a lawyer of high reputation for ability, with large experience and extensive practice in Oregon, he is signally well qualified to pronounce an opinion. To Int. 14, (p. 253) as to what feeling existed among the people concerning the Company, and whether that feeling would affect their chance in the courts, he answers: "Citizens of that country were very generally pretty hostile to the claims of the Hudson's Bay Company, and manifested a very decided disposition to maintain possession of the public lands they had settled upon as against any claim or action

“ that might be taken by the Hudson’s Bay Company. I don’t think
 “ that the Hudson’s Bay Company could have obtained a verdict in
 “ any court in Clarke County, sustaining their claim or right to any
 “ portion of the lands in that country, from 1853 to the autumn of
 “ 1862, unless it may have been to the four or five acres enclosed in
 “ their stockade at Fort Vancouver, and not to that since the last day
 “ of May, 1859.”

The strong and pointed evidence on the subject by Fitzhugh in the P. S. A. Company’s case (p. 143) is applicable also in this ; and all these opinions find a full justification in the extraordinary charge of Chief Justice Hewitt, referred to, sup. p. 153.

It may, perhaps, be dwelling unnecessarily upon the subject, but before leaving it I desire to point attention to the expressions contained in some of the letters fyled, shewing what was done at the time, and what were the views of the officers of the Company upon the difficulties that surrounded them. From a letter by Messrs. Ogden and Mactavish to Colonel Bonneville (B 2 a) dated 3rd January, 1854, we find the Sheriff of the County, Mr. Willis, figuring as one of the trespassers on the Company’s land, and that he was warned off, but without effect, and the military authority was appealed to for protection, whether successfully or not does not appear.

Mr. Grahame, in a letter (D 8) dated 5th August, 1859, after stating that certain publications in the newspapers “ had ignited a fire of filibusterism,” and that parties had laid claim to the lands of the Company, and notified him of their intention to put up fences upon it, adds : “ I have threatened them with prosecution, and so far they have done nothing, but will, I fear, soon commence “ operating, as the public sentiment is in their favor, and a trial “ by jury would give them a verdict against us.” I pursue this topic no further, but in order to shew that the spirit of the press in Washington Territory has lost nothing of the acrimony which lighted this “ fire of filibusterism ” in 1859, and, indeed, long before, I refer to the local newspapers fyled, of record, and already adverted to. They contain a lively and true expression of the public feeling of the territory towards the claimants.

The fact then of these enormous and persistent trespasses by American citizens, under the countenance and encouragement of the authorities and laws of the United States, and the fact that no

protection or redress could be obtained from the Courts, are, I take it, fully established.

The matters falling within the terms of the 4th proposition have now been presented, imperfectly I fear, yet with some degree of completeness. It only remains to add, before proceeding to the next proposition, the statements of the witnesses which show the loss and damages resulting to the Company from being deprived, by the several forms of aggression particularized, of the use and enjoyment of its property. These statements have already been given in some instances when it was difficult to separate them from the context. I now propose, however, to present them together here in a more compact form.

MR. MCKINLAY (p. 84), estimates the loss of profits on agricultural produce at Vancouver, from the time the Company was compelled to give up farming there, which began to be the case within two or three years after the treaty, at \$40,000 annually. Tuzo estimates it from \$40,000 to \$50,000 annually (p. 82); and he states as his basis in part, that 2,000 acres of very fine land had been enclosed, and sown with timothy grass by the Company, upon which there could have been annually realized \$20 an acre from the hay alone. These tracts were all taken possession of by the military, and by several trespassers whom he names, and who became wealthy from the sale of the produce of this land.

MR. MACTAVISH says (p. 220), I should estimate the loss sustained by the Company, in consequence of the occupation of their lands around Fort Vancouver and neighbourhood, by squatters and others, commencing with the year 1850, owing to which the Company's cattle all disappeared, and other damages were incurred at from forty to fifty thousand dollars annually. For the forced abandonment of Fort Vancouver in 1860, by order of General Harney, I should estimate the loss to the Company at one hundred thousand dollars. And (p. 233) in answer to a Cross-Int. he explains that he refers to the losses of business, and not including the lands and buildings. These statements relate to Vancouver only. The evidence relating to the loss of business at Walla Walla, Bois  and Fort Hall has already been noticed. It shows there an estimated annual loss at these three posts of from \$20,000 to \$25,000. These sums added to the estimate of loss at Vancouver make up a total very much ex-

ceeding the £50,000 sterling, specified in the memorial ; and which affords a guide to the value of property capable of producing so great an annual return.

It has been already stated that the Hudson's Bay Company, in consequence of the course pursued towards it by the American Government and people, was compelled to abandon the country, except Colville and the outposts of Okanagan, Kootenais and Flat-heads dependent upon it. It did so in May, 1860, leaving the remnants of its possessions and property at the mercy of those who had compelled this final step. It will be proper to call attention to the correspondence which relates to this subject, in order to shew the necessity for the step and the strong terms in which the representatives of the Government of Great Britain remonstrated with that of the United States upon it. The letters between General Harney and the officers of the Company have already been given. The others will be found in List D under the numbers 5, 10, 12, 13, 14, 15, 16, 17 (pp 405. 410. 412 et. 389.) These all merit a careful perusal, as shewing the condition to which the Company was reduced, and the treatment of its interests by the United States authorities. Two of them, however, are of sufficient importance to be more particularly brought under notice in this place. The first of these is number 13 (p. 413), a letter from Lord Lyons to Mr. Cass, dated 25th May, 1860. In this letter occur some remarkable passages, shewing to how perilous a point the course pursued by the United States Government in violation of the treaty, and the complaints of the Company had driven the relations of the two countries. Lord Lyons says : " It is my duty in obedience to the orders of Her Majesty's Government, once more to call your attention to the question of the rights secured to the Hudson's Bay and Puget Sound Companies, by the treaty signed at Washington on the 15th of June, 1846.

" It is to be feared that this question is becoming more critical from day to day. I had on the 14th ultimo the honor to inform the Government of the United States, verbally, that in the opinion of Her Majesty's Government the question was assuming a serious character. Her Majesty's Government have not, however, as yet received from the United States any assurances calculated to remove that impression. On the other hand, the

"accounts which from time to time reach Her Majesty's Government, appear to shew a settled determination on the part of the officers of the United States in Oregon, to ignore the rights of the Hudson's Bay Company, and to disregard the stipulations of the treaty of 1846."

After stating that steps were evidently in contemplation, on the part of the authorities in Washington Territory, which would amount to a confiscation of the property of the Hudson's Bay Company, he goes on to say: "A spoliation so unjust and unprovoked, one in which the rights of a public Company and the stipulations of a Treaty would be alike disregarded, would meet with the steady and determined resistance of Her Majesty's Government," adding, "the case admits of no delay;" and further, "the accompanying papers shew beyond a doubt the character of the measure in contemplation; and I am accordingly instructed by Her Majesty's principal Secretary of State for Foreign Affairs to call upon the Government of the United States to arrest the proceedings of their authorities in Oregon Territory, and to protect the rights of the Hudson's Bay Company, as secured by Treaty of 1846. The British Government desire to see the stipulations of the Treaty of 1846 faithfully carried into effect, and they would object equally to a direct or an indirect violation of its provisions." The act of spoliation alluded to was the appointment of the Surveyor-General of Washington Territory to decide upon the land claims of the P. S. A. Co., and this after he had officially declared that the claim was wholly unfounded. (See Doc. Ev. P. S. A. Co., G. 4, 4 a, 4 b, 4 c, 4 d, p. 181-2-3-4, and Doc. Ev. of U. S., B 1, p. 303-4).

The tone of this despatch indicates how strong the provocation must have been to have called it forth. And it was fortunate for the Claimants that the British Government was at last thus aroused to a sense of the crying injustice to which they were subjected, and that a crisis had arrived at which regard for national honor required a direct and stern interference for the protection of the rights guaranteed by the Treaty. The effect of this interference was salutary, and to it, without doubt, we are indebted for the Convention of 1863. I do not deem it necessary to make any further quotations from these letters. They speak for themselves.

But I would particularly mention one of them, that of Governor Berens to Lord John Russell, dated 9th February, 1861 (D. 17). It contains a detail of the acts of the United States authorities, and shews that while professions were made of a disposition to observe the Treaty, orders were in fact given which were in palpable and gross violation of its stipulations. I leave the whole of this correspondence to the careful consideration of the Commissioners, and, without further remarks upon it, I pass to the 5th proposition.

FIFTH PROPOSITION.

The terms of this proposition are : That in consequence of the failure to perform the obligations assumed under the Treaty, and of the aggressions above complained of, the United States are liable to the Hudson's Bay Company for the highest value of the rights and possessions secured by it, at any time between its date and the production of the present claim ; and are also liable for all losses and damages suffered by the Hudson's Bay Company in consequence.

This proposition is little more than an obvious legal inference from the facts which have already been presented. If the evidence be true that, at the date of the Treaty, the Company was in possession of the tracts of land, the rights of trade, the right of navigation, and other incidental rights particularized in the Memorial, and that they have been deprived of all these by the action of the authorities of the United States, civil and military, and of American citizens acting under Donation or other laws, with the countenance and encouragement of these authorities ; if, I say, the evidence of all this be true, there is small room to doubt that the United States are liable for the value of all these rights, and for whatever loss and damage the Company has suffered from being deprived of them. For the acts of their officers, and the losses immediately consequent on their wars, the liability is so manifest that I shall add nothing more upon the subject. The only controversy which can possibly be raised is as to the extent to which such liability would attach to the Government for the aggressions of private trespassers. Upon this question, however, there should exist really as little doubt as upon the other. These trespasses were made under the Donation and Settling Laws of the United States.

According to the provisions of these laws, the claims, as they were technically called, of the trespassers were entered in a public office, and acquired the character of a public record. The men making them were not thus acting as mere unauthorized squatters, but rested upon a pretended basis of legal authority. In most instances patents were granted to them for the lands which they had thus reserved (see on map H, sections marked P in red) and they were sustained by the opinions and the acts of the officers of the United States army, and of the Civil Departments, not only in Washington Territory, but also at the seat of Government.

The proceedings and influences tending to the expropriation and destruction of the interests of the Hudson's Bay Company, had thus in some instances the direct sanction of the Government of the United States, and in all others its acquiescence and tacit approval; without which the present controversy never would have arisen.

Suppose, for an instant, that the Government, true to the obligations assumed by it under the Treaty, had abstained from all acts of expropriation and aggression at Fort Vancouver and elsewhere, and had caused its officers to maintain the Company in its Treaty rights instead of attacking them by official correspondence and actual usurpation; had stopped the Public Surveyor from entering upon the lands in its possession, until boundaries could be defined and agreed upon, and prevented by special instructions the registering of settlers' claims upon such lands; had discountenanced and repressed the spirit of hostility and consequent spoliation in its first manifestations among the people; and had, in short, from the beginning and continuously shewn a determination, that the rights of the Hudson's Bay Company should be respected. If such a just and honorable course, consistent with the dignity and self respect of a great nation, had been pursued by the Government of the United States, how different would have been the position of the Claimants. It is likely that within a few years after the Treaty, their possessions would have been transferred to that Government for a just compensation, settled on a basis satisfactory to both parties. If not, their property would have been kept up, increasing in value with the increase of wealth in the country, to which it would have continued to contribute. Their agriculture and trade operations would have changed with changing circumstances, and, instead of being unproductive, would by adaptation to the new order of things

have become more and more profitable. Above this, confidence would have been felt in the title which the Company could have given, and its lands could have been disposed of, as favorable opportunities offered, at prices exceeding the highest estimate which has been put upon them.

But instead of the course supposed, the actual one pursued was, as we have seen, widely different; and now, in pursuance of the same course, the present claim is met by a vigorous and prolonged effort to create out of the spirit of hostility and self-interest which pervades the whole population, a mass of evidence to shew that the amount claimed far exceeds the value of the lost rights. That is to say, after their property has been depreciated, their trade destroyed, their rights denied or frittered away, and the claimants compelled to abandon the country and all they possessed in it, the party responsible for all this, seeks to make it a ground for a diminution of liability. Having wilfully reduced the thing to a state in which they pretend that it is valueless or nearly so, the Government of the United States would now acquire it for the no value to which it has been thus reduced. But I have no misgivings with respect to the ground I have assumed upon the subject of all these aggressions. No legal subtlety, no ingenuity of argument, no form of sophism, can so pervert the plain facts of the case—the broad common sense view which it presents, as to free the United States Government from full responsibility in this matter.

I now, by way of resumption, lay before the Commissioners a statement of what I consider to be the result of the evidence upon the several specified heads of demand, following the order in which they have been treated.

1. Aggregate value of Vancouver and the other Posts	\$1,289,958
2. Value of the trade not less than	950,000
3. Right of navigating a Columbia river not less than	1,460,000
4. Loss and damage from being deprived of their Posts not less than	200,000

FORMER NEGOTIATIONS AND OFFICIAL STATEMENTS.

It will be convenient here, in connection with this head of the present discussion, and after having submitted the foregoing statement of the aggressions suffered by the claimants, to notice certain negotiations, which have been brought up by the docu

mentary evidence of the Respondents, for the sale of the property and rights of the Hudson's Bay and Puget Sound Agricultural Companies.

Such negotiations are shown to have taken place at two separate times, one in 1849, when proposals were made to purchase and sell for \$850,000; and another in 1860, when the Companies, through Lord Lyons, seem to have consented to accept \$500,000 for all their claims.

I propose to give the history of these offers, and of another, which is carefully omitted from the evidence for the defence, showing the circumstances under which they were made, and then to assign specific reasons why they have no application, and can have no effect upon the present claim. It has been already stated in a former part of this argument, that the Hudson's Bay Company, very shortly after the Treaty of 1846, perceived the strongly hostile feeling which prevailed against it as a wealthy and powerful foreign Corporation, and became apprehensive that little was to be expected from the protection of the American Government, or from the forbearance of its citizens. It therefore felt that its tenure in the country was insecure, and anxiously caught at any hope of obtaining some compensation, however inadequate, for a description of property which could not fail to prove a constant cause of jealousy and ill will, likely to lead to difficulties between the two countries, and of which it might, eventually, be deprived without any compensation at all. The whole statement on the preceding pages shows how strong a justification there was for this fear; and the declarations of the chief officers of the Company, to be found in the evidence already noticed, and that contained in the documentary evidence, under letter F. exhibit its influence. It appears in the letter from Sir John Pelly, written to Sir George Simpson in 1848 (Claimants' Doc. Ev. p. 403), and also in his letter produced by the Respondents (Doc. Ev. p. 243). And Mr. Ogden, writing in 1851, to Sir George Simpson (Doc. Ev. F 4, p. 436), says with more intensity:—"I am not very sanguine of our receiving a cent, and my opinion is, the American Government are anxious to drive us out of the country, and will resort to all measures, so far as placing every obstacle in our way, to disgust us." This apprehension affords the true motive for the

consents given by the Companies at different times to an excessive and unreasonable reduction of their rightful claims.

The first trace we find of any direct proposition for the purchase of the rights of the Companies, seems to have proceeded from Mr. Webster, in a paper drawn up by him and fyled by the claimants under the designation F 5. It is in his handwriting, and is evidently the first rough sketch of a proposed agreement between the United States Government and the Hudson's Bay and Puget Sound Companies. The terms expressed in it are that the latter shall transfer to the United States all their property, "including the right to navigate the Columbia "River and its tributaries," with the exception of such inclosed grounds and mills as were not wanted by the United States for naval or military purposes, for \$700,000. This, in fact, comes up to the \$1,000,000 mentioned in Sir George Simpson's letter; the property excepted, viz., the then enclosed grounds and mills, being on a moderate estimate, worth far more than \$300,000. That draft appears to have been the basis of the convention of which a copy is produced by the Respondents (Doc. Fr. A 3, p. 244); the copy in the possession of the Hudson's Bay Company having been sent by Mr. Clayton, then Secretary of State, to Sir George Simpson, as appears by the note of the former annexed to it, fyled by the Claimants (F 5a, p. 438). By this latter draft, a further reduction was submitted to by the claimants, in the vain hope that these successive sacrifices would lead to a speedy settlement, and the whole property exclusive of the stock was put at \$850,000. I can only account for the draft in the handwriting of Mr. Webster and the note from Mr. Clayton to Sir George Simpson, which accompanied the second draft, by supposing that the propositions contained in them did not emanate from the Companies, but on the contrary, proceeded from Officers of the American Government, which when accepted, that Government refused to carry out.

Next came another negotiation, in 1852, between Mr. Webster and Mr. Crampton, the British Minister at Washington, which reached the stage of a formal agreement drawn out by Mr. Webster, for the purchase and sale of all the property and rights of the Hudson's Bay and Puget Sound Companies, for \$1,000,000. It was probably based upon the expected information mentioned by

him in his letter (Doc. Ev. F 6), and which must have been furnished by Judge Nelson and others about that time. This agreement was frustrated by the death of the great jurist and statesman in November of that year. The Doc. Ev. F 6 a to g, (p. 441 to 447) consisting of the agreement, with several letters from Mr. Crampton, and one from Mr. Fletcher Webster, are sufficiently explanatory of what then occurred. Following that negotiation, the statement filed by the Respondents (Doc. Ev. A 4, p. 250), which had been the basis of the agreement, was furnished by Sir George Simpson to Mr. Everett, the successor of Mr. Webster, as Secretary of State, and it was then expected that the convention between the latter and Mr. Crampton would have been perfected and carried out in the terms agreed upon. In this, however, as in all the other expectations of a settlement of their claims upon any terms whatever, the Companies were doomed to disappointment, and the next step in the history of these wearisome and fruitless negotiations, was the appointment of Mr. Stevens, and his one sided and preposterous report and letter, assuming that the Hudson's Bay Company had no right whatever in the soil, no right of trade with the Indians, that all such rights as it might have, would finally cease in 1859, and that the value at the date of the report of the possessory rights of the two Companies under the treaty, did not exceed \$300,000.

The false reasoning and misstatements upon which that report is based, have already been exposed, and a just opinion of it is expressed by Lord Napier in his despatch to Mr. Cass (Claimants Doc. Ev. F 14, p. 456), which has not yet been noticed. Using the measured language of diplomacy, he nevertheless characterizes the valuation of Mr. Stevens, as "*ex parte*, hasty, partial, obviously "susceptible of dispute, and likely to wear a very different aspect "in the eyes of others and even in his own, if subjected to careful "and dispassionate scrutiny." I solicit a careful perusal of this despatch, as it deals in a straight-forward and satisfactory manner not only with the report, but also with the general controversy between the Companies and the American Government. The report seems to have been got up in order to found upon it an application to Congress, for a grant of money to that amount to buy these rights. The Companies protested at once against the

inadequacy of the sum. (Doc. Ev. F 15, p. 459, G 5, p. 185.) Nevertheless, the government of the day made a show of endeavouring to obtain the passage of an act for the appropriation, and failed of success. Nothing was obtained although it was recommended by the President in two successive messages, one in 1854 and the other in 1855. (See House Jour. 2nd Sess., 33rd Congress, p. 16. Ex. Doc. 1st Sess. 34th Congress, 1855; and Mr. Marcy's Letter to Sir George Simpson, (Doc. Ev. F 9, p. 450.)

This negative result was, in effect, a declaration by the nation through its legislature, that it would not pay even the inconsiderable amount which one of its own servants, chosen for the special purpose of depreciating the property, had declared to be its value. It involved a refusal to make any appropriation for the purchase of the rights of the Companies, and appeared to indicate an intention to confiscate them. It was so received by the Claimants, and aroused their fears to such a degree, that they would, without doubt, have been willing to accept any offer which would have afforded a chance of securing the merest fragment of their property from total wreck. When the question came to be, as it then was in their eyes, whether they should insist upon a just compensation, and thereby incur the almost certain loss of the whole, or should accept any amount, however trivial, which might be obtainable, it is manifest that the latter was the wiser course. It, however, then, and for years afterwards, appeared that nothing whatever would be obtained. The correspondence after the messages, until 1860, when the offer through Lord Lyons was made, six months after the Claimants had been driven from the country, shows their despondency and hopelessness on the subject. I refer to letters to be found in the Claimants Doc. Ev. (F 6 f, p. 446, F 10, p. 452, F 12, p. 454) for an expression of the distrust and fears which existed in the minds, not only of those connected with the Company, but of others of high position, who were independent of it. Mr. Crampton, in his letter to Sir George Simpson, 12th March, 1854, (F 6 f, p. 445,) after stating a conversation with Mr. Marcy, says: "All this, *looks like a design in some quarter to take the Hudson's Bay Company's property instead of buying it, or at least to depreciate it first, and then to buy it cheap.*" Again, in a second letter, (F 6 g, p. 446,) he says: "He (Mr. Marcy) declines to

"direct the Governor of Washington territory to delay putting into force the notice to the Hudson's Bay Company to cease trading with the Indians," (this was the notice given by Mr. Stevens) "and contests that the Company have any right so to trade under the treaty of 1846."

Mr. Lumley, representing the British Minister at Washington, writes on the 14th August, 1856, to Sir George Simpson, (F 10, p. 451): "The U. S. Government seems inclined to drive a hard bargain with you, and to cheapen the purchase to the utmost by depreciating its value," and again in a letter to Mr. Hammond, secretary to Lord Clarendon, 26th October, 1856, he says: "I should be sorry to state anything which might appear like an improper or unjustifiable reflection on the U. S. Government, and yet, when it is considered how little sincere desire has been shown by them to carry into execution the provisions of the 3rd and 4th articles of the treaty, so important to the interests of the British Companies, and when it is seen that instead of taking the property at the very reasonable price for which it is offered to the United States, attempts are made to depreciate its value, it is impossible not to fear that the conduct of the government is actuated by the determination not to pay for that which they hope to obtain without purchase."

Mr. Shepherd, the Governor of the Hudson's Bay Company, referring to the above letter, expresses the same fear in these words: "I have no doubt that Mr. Lumley is quite correct in his surmise that the U. S. Government have been procrastinating in the hope that we shall be forced to accept any terms which they may be pleased to dictate." And Mr. Berens, Deputy Governor, writing on the 11th February, 1859, to Sir George Simpson, (F 17, p. 461,) says: "I am sorry that you should take such a gloomy view of our prospects in the negotiations respecting our possessory rights, but I must confess that it rather confirms the idea which I endeavor to refute." Many more expressions of this kind might be produced, as few letters passed between the officers of the Companies, or were written by them to the government authorities, which do not contain something to the same effect.

In all the interval of this correspondence the aggressions and violations of right complained of were going on, and the claimants

were being crowded, step by step, out of their most valuable possessions. Then began the notable project of getting rid of the Puget Sound Company's rights by appointing the Surveyor General of Washington Territory to adjudicate upon them; this officer having already declared officially in his report (P.S.A. Co.'s Doc. Ev. G 4, p. 181.) that that Company had no rights. That was the scheme characterized by Lord Lyons as a confiscation, and so sharply rebuked by him in his letter to Mr. Cass (Claimants' Doc. Ev. p. 413.) It reached the form of an Act of Congress (G 4 d, p. 184.) and the spoliation contemplated by it was only stopped by the firm remonstrances of the British Government.

It has already been seen that after a long and bitter correspondence, portions of which have been put on record, the Hudson's Bay Company were finally compelled in 1860 to abandon the country; the commanding officer at Vancouver having officially declared, under the instructions of Secretary Floyd, that it had no longer any right there and was suffered to remain only upon his tolerance. The Claimants, thus driven to the wall by the United States authorities, and feeling that there could be no redress unless the British Government should in their behalf resort to the *ultima ratio* of nations, became, of course, utterly helpless. On the one hand was confiscation, on the other, the unwillingness of the British Government to be forced to extremities, and its anxiety to settle the question at whatever cost to the only parties really interested in it. The Company itself was powerless between these two great interests; the negotiation was therefore placed in the hands of the British Minister at Washington, and the Claimants had the alternative either of peaceably acquiescing in the proposals of the government, or of losing all. It was under such circumstances, six months after they were driven from the country, and in the hope of obtaining an immediate settlement, that a reluctant consent was given by them to accept the \$500,000, mentioned in Lord Lyons' letter of the 10th December 1860. (U. S. Doc. Ev. p. 282 et seq.)

These circumstances and the antecedent facts show that the consent was given under a constraint as stringent as any which constitutes duress in law. If instead of \$500,000, Lord John Russell had suggested \$100,000 or \$10,000, the Claimants would have been equally compelled to submit to the sacrifice.

It is obvious then, that these several negotiations and consents cannot be received as exhibiting any appreciation by the companies of the true value of their possessory rights. And the fact must not be lost sight of, that the only apparent appreciation before filing the present claim, is the estimate of \$2,330,000, furnished by Sir George Simpson (U. S. Doc. Ev. p. 250). This was exclusive of the right of navigating the Columbia river, which from the special mention made of it in all the negotiations, and in the correspondence, was manifestly regarded both by the American Government and the Company as of great value, and cannot be estimated at less than \$1,500,000 more. Of that estimate, hastily given, Sir George says in his letter to Mr. Marcy, 14th Oct. 1853, (Doc. Ev. F 7, p. 447.) "It can scarcely be considered an approximation to the value of such property and 'possessory rights' which on a closer examination *I find to be of much greater extent than I was then aware of;*" and he adds, "but the Hudson's Bay and Puget Sound Companies being anxious that the long pending negotiation for the sale in question should be brought to a close, have empowered me to conclude the same for the consideration originally proposed, say one million of dollars." And the further observation must now be made, that the increase in the value of land since the time of that estimate, renders it worthless as a criterion of value subsequently.

This offer which accompanied the estimate, to accept one million, was made under the influences already adverted to; which were strengthened by the consideration expressed in the memorandum, (p. 249) that the position of the Companies might become a powerful source of strife injurious to the peace and good order of the country, and eventually involve national interests also. It was a great sacrifice in order to terminate a troublesome and perilous question, and consented to in the expectation of immediate settlement. But let it be carefully noted, that all this occurred fifteen years ago. Had the offer been accepted, and the one million then paid, that sum would at the present day fall little short of the whole amount of the actual claim.

But that offer was not accepted, nor was any other, and after a long and barren controversy, this Commission has been constituted to adjudge, not upon any former offer or appreciation, but upon the

true value of the treaty rights ; and that value is asserted and has been proved to be far more than any estimate then made. It is before this tribunal that the Claimants have found themselves, for the first time, in a position to act upon a footing of equal advantage with the Respondents and to claim their rights at their true value. They could not do so while lying at the mercy of the only party which could acquire them, and which seemed resolved to take them without return of compensation, great or small.

I cannot believe that after this statement, every particular of which is sustained by evidence, any argument will be necessary to induce a conclusion that the negotiations and offers can have no influence upon the judgment now sought. The reasons for such conclusion, which are apparent upon the face of the statement and rest upon the nature of the duty imposed upon the Commission by the treaty of 1863, may be summed up in a few words.

1. The offers were a proffer of compromise for the purpose of terminating a controversy in which all the advantages of power were on the side of the United States. They were made under the pressure of urgent and well grounded apprehensions of inevitable and total loss, and therefore, in themselves, are not evidence of value.

2. They were accompanied or preceded by an estimate and declaration, shewing that, in fact, they did not approach in amount the value of the rights in question.

3. They were never accepted, and therefore became in law and reason extinct in all their effects, as fully as if they had never been made.

4. The treaty of 1863, adopted an entirely new mode of dealing with the controversy, and all previous negotiations and offers with the consequences and presumptions arising from them were waived and deleted by the reference to the tribunal created under it. This Honorable Commission, therefore, has no authority to revive these, or, in any degree, to base its judgment upon them. Its definite office is to assess an adequate money consideration, not upon an erroneous and inadequate estimate made fifteen years ago, but according to the true value of the rights as established by the evidence before it, independently of all antecedents.

I propose in this connection also to notice briefly a part of the Documentary Evidence of the Respondents which has not yet

been adverted to. A portion of this evidence has been produced with the object of shewing that the rights of the Hudson's Bay Company have been denied or questioned both in England and Canada by persons of high official position. That this should have occurred in the history of a great and powerful corporation, holding a vast tract of country and exercising a virtual monopoly in it, is not to be wondered at; such a body is always unpopular and is as likely to be so in England as elsewhere. From time to time party cries have been raised against it, and in 1857-8 there was so strong a feeling that it resulted in a parliamentary enquiry. In Canada, also, the same disfavor exists, quickened by a desire among a class of its public men to take possession of the country held by the Hudson's Bay Company and to drive a hard bargain by depreciating as much as possible its value. These dispositions, however, cannot be received as exponents or authority in settling a question of the value of legal rights, and are noticed rather from an unwillingness to pass them in silence than from any apprehension of their effect upon the minds of the Commissioners.

The documents referred to, consist first, of five despatches from Sir E. Bulwer Lytton, then Secretary of State for the colonies (U. S. Doc. Ev. A 12, p. 286 and seq.); a few words, will suffice to dispose of them. They were written to Sir James Douglas, Governor of Vancouver's Island, in reference to British Columbia, then about to be erected into a colony. The occasion and particular subject of these letters seems to have been the question of a right to exclude all persons from British Columbia and the navigation of Fraser's River unless they held the Company's license. Sir James Douglas had for many years previously been a chief officer of the Hudson's Bay Company, and held a large pecuniary interest in it. The people of the new colony well knowing this and sharing in the common sentiment against the Company, were likely to look upon his acts and perhaps his appointment to the office with distrust—and the Secretary for the colonies thought it necessary under the circumstances to enter his *caveat* and to declare strongly against any favor being shewn toward so obnoxious a body. In doing so he undertook to express certain unwarranted opinions as to its general rights. These opinions, founded upon imperfect information, as indeed the despatches themselves shew, could not determine or in any

manner affect the legal rights of the Company, nor can they have any weight in influencing the judgment of the Commission. That they are wholly erroneous and did great injustice to the Hudson's Bay Company is proved, by the course of the British Government toward that Company, of which an account has been given in the preceding pages ; by the whole body of correspondence relating to the rights of the Company which have never been questioned by any other British minister ; and by the action of the Government in relation to the land claimed by the Hudson's Bay Company in British Columbia and Vancouver's Island. I must be permitted to add, that the whole tone and temper of these despatches is manifestly unfriendly and unfair to a body which had unquestionably rendered important services to the Crown of Great Britain ; and the protest by Governor Douglas (U. S. Doc. Ev. part 3, p. 391) against the injustice of Sir E. B. Lytton's despatches, is as strong as the relative positions of the two men would admit.

Of the reports, one by Mr. Brown and the other by the Canadian delegates (U. S. Doc. Ev. 1 and 2), I have nothing to say, except that they were written by politicians seeking a certain object and adopting such views and representations as would be most likely to attain it at the cheapest rate. Such is the tendency of the reference in the former report (p. 347), and in the latter (p. 350), to the lands held by the Company in British Columbia, and to the declared willingness of the United States Government to pay \$1,000,000 in satisfaction of the present claim.

The other documents of the Respondents will be left without remark until the application and use for which they are intended shall have been explained by the Counsel for the United States.

GENERAL CONSIDERATIONS.

In addition to all the special grounds upon which the present claim rests and which have now been exposed, there are considerations of a broader character which are entitled to weight in dealing fairly with the questions submitted to the Commission. These considerations, or many of them, have been stated in general terms in the Memorial. And in order not to repeat unnecessarily, I would

respectfully request the attention of the Honorable the Commissioners to that statement, which is in the following terms:—

“In addition to the special statements hereinbefore contained, the Hudson’s Bay Company submit, that throughout a long series of years, they expended large sums of money, and devoted much labor and time in efforts to bring the native population into such a condition, that safe and profitable relations in regard to trade and general intercourse could be established with them. The exploration of the country, the expenditure for labor, and of the parties engaged, the opening of roads, the strong force required as a protection against the Indians, their conciliation, brought about, sometimes by a resort to forcible measures, but chiefly by liberal dealing, effected a great change in the condition of the country, rendering it fit for immediate settlement. These were substantial benefits to the Government and people of the United States, under whose Sovereignty this Territory fell, and could not have been secured without a very large outlay. It is, of course, impossible to give any minute details of expenditures of this class, and of the advantages which the United States have derived from them, but the justice of extending to the Hudson’s Bay Company liberal compensation, founded on these considerations, is too apparent to allow of any reasonable hesitation in admitting it.”

I shall leave this statement without comment or enlargement, trusting to the evidence to supply the absence of any more lengthened or elaborate exposition.

There are several witnesses who testify strongly on this subject. The evidence of Sir James Douglas and that of Mr. Mactavish, are given in language which renders any addition to it unnecessary, and it is not to be forgotten, that these witnesses are the only living ones, whose position, long services and intelligence enable them to speak fully on the subject. Mr. Ogden and others whose testimony would have been equally valuable, are long since dead. Governor Douglas says (p. 55): “The Hudson’s Bay Company were certainly put to a very great expense in exploring the country in making roads, in establishing an effective control over the Indian tribes, and bringing them into friendly relations with the whites, and thus rendering the country habitable for settlers,—substantial benefits, which, judging from the precedents afforded by the settle-

“ment of the Territory of the United States of America and of Her Majesty’s Colonies, are never attained without great sacrifice of life, and a large outlay of money. A reference to the Hudson’s Bay Company’s Books will prove that besides the general kindness extended to the first American settlers who travelled by the over-land route to Oregon, material aid was largely dispensed to them in clothing, agricultural implements, and seed-grain, without which they could hardly have succeeded in establishing the country. If my memory serves me right, the value of the supplies furnished to these early settlers amounted to a very large sum, and I am informed that a large portion of it has never been repaid.”

MR. MACTAVISH, in his answer to Int. 16, pp. 212, 213, gives the following clear and ample statements. “At the different establishments, particularly at Fort Vancouver, there were roads made at considerable outlay, and the road between Cowlitz and the Nisqually country was first opened by the Company. The various portages on the Columbia River were also made and cleared at some expense. With respect to the Indians, much was done to civilize them, and at the date of the treaty generally, the Indians in Oregon were favourably disposed towards the whites, who were then settling in the country, entirely owing to the influence the Company’s people had acquired over them. Every assistance was given by the late Dr. McLaughlin, and the Company’s officers generally, to the early settlers in Oregon. All this was at an immense outlay to the Company, but what the amount of that outlay was I can hardly say; indeed, it would be difficult to estimate the outlay which the establishment of a business like that of the Hudson’s Bay Company, in the wilderness of Oregon, remote from every source of supply, necessarily involves. The outlay in exploring the country and opening roads, the cost of labor, the strong force required as a protection against the natives, all necessary for the change effected in the country, by which large tracts are brought into cultivation, and made to produce the necessaries and comforts of a civilized life, and the Indians were conciliated and led into friendly relation, were enormous, and resulted in benefit to the United States, which, judging from the history of other colonies, it would have cost millions to acquire.”

The aid to settlers, the rescue of American citizens, and the assis-

tance and supplies furnished to the United States authorities in the Indian Wars, are shewn in his answer to the 17th Int. pp. 213, 214. Mr. Odgen's journey in 1843, and the service rendered by the Company through him in the perilous undertaking of rescuing from the Cayuse Indians upwards of sixty women and children held in captivity by them, after the murder of Dr. Whitman and others, are acknowledged by Governor Abernethy in a letter fyled of record under the designation C 1. The language in which this letter is expressed entitles it to particular attention, as it not only recognizes in warm and manly terms the importance of the services rendered, but also frankly admits the inability of the Americans, to rescue the sufferers.

These services were gratuitous. No compensation has ever been asked, nor are they now stated in order to make them the ground of any claim. But it is not unreasonable to use the fact as an evidence of the great power then possessed by the Hudson's Bay Company over the Territory, and of the beneficial manner in which that power was used for the protection of American citizens, then as now, bitterly hostile to its interests and existence. The undeniable fact is, that the influence and exertions of the Company preserved the lives of upwards of 60 persons, who have now numerous descendants in Oregon, when all other authority and agencies were powerless for that purpose, and whatever may be paid by the United States to the Hudson's Bay Company, this gift of the lives of its citizens must always remain an unpaid debt. But not only was there this readiness upon a call of humanity, which sank as it ought to have done, all distinctions of nationality, and the remembrance of all controversies, the same disposition and the same power to aid, were manifested in the promptitude with which applications were granted for supplies in the Indian wars of 1855 and 1856. Upon the request of the respective governors of the territories of Washington and Oregon, stores were furnished to a large amount, not less than \$100,000, to the Volunteers engaged in that war. Of this amount the large balance of some \$30,000 still remains unpaid, although the whole claim was established by vouchers from the proper officers (Mactavish pp. 214, 232). The letters of Governors Curry and Stevens on the subject of these supplies are of record under the numbers C 3, C 4, C 5, C 6.

It is, perhaps, unnecessary to dwell upon these facts. A reference to the evidence of Mr. Mactavish, on the pages cited, will afford sufficient information to justify the conclusion, that without the aid of the Hudson's Bay Company, a vast amount of expense and difficulty involving probably great loss of life, would have been suffered by the American inhabitants of the Territory in their quarrels with the aborigines. The Respondents have produced the accounts of the Hudson's Bay Company for the supplies, and also a witness, R. S. Atkinson (pt. 2, p. 181), who testifies that these accounts were not cut down more than other accounts. It is really difficult to see what sort of an answer this is in justification of depriving the Company of \$30,000 upon its account for some \$100,000 for goods actually furnished at reasonable prices to the United States in its hour of need. That other persons were dealt with as unjustly as the Company, or that they sent in false claims, does not change the fact that the Hudson's Bay Company furnished the United States \$30,000 worth of supplies for which, by Mr. Atkinson's own shewing, it has never been paid. His evidence in his answers to the cross-interrogatories (p. 188) confirms that of Mr. Mactavish.

Another topic to which I would briefly direct attention, is the conduct of the Company towards early American settlers in Oregon. It seems pretty evident that after 1846 the people from the first assumed a hostile and troublesome attitude. It has been said, and probably with truth, that the Company was opposed to the general settlement of the country by those unfavorable to its interests. Certain it is, that by the result it was deprived not only of considerable advantages in the Fur Trade, but also of a very large portion of its most valuable possessions. Yet it cannot be doubted after a careful examination of the whole evidence, that the Company was of great assistance to the settlers by furnishing them with supplies and means of transport when they could not have been obtained elsewhere. Dr. McLaughlin may have gone, and did go beyond a prudent limit in the advances made by him to this class of persons, and much that was so advanced has not been and never will be repaid. But the fact stands out in unequivocal significance and clearness, that by helping the settlers when there were none others to do it, the Hudson's

Bay Company did materially aid in the settlement of the country, and in making it fit for the abode of civilized life.

Mr. Mactavish says (p. 232) : "The Company claims no right to exclude settlers from Oregon, either north or south of 49°. "I think they never encouraged or discouraged settlement farther than that when emigrants came they helped them on as much as they could. They tried all they could to induce the Indians to settle down and cultivate land like white people, but it was of no effect.

Simmons, one of the earliest immigrants, speaking of the year 1844, (p. 134) says : "The Indians were friendly, and treated us very well all the way from Fort Hall to Fort Vancouver, and I attribute that treatment to the influence of the Hudson's Bay Company. I was loaned a batteau to bring my family down the river, free of charge, and the Company treated other emigrants in the same manner. They let us have provisions, seed, grain, and breeding pigs ; they also gave us employment." Similar facts are established by other witnesses, some for the Claimants, and several for the Respondents. Of the latter, Meek (p. 77-8), Campbell (p. 230) and Applegate (p. 304-5), are referred to. The memorial to Congress in 1845, (Claimants' Doc. Ev. F 1) in its general tenor affords evidence to the same effect ; and Admiral Wilkes in his narrative, after speaking in terms of high commendation of the course pursued by the Hudson's Bay Company in its aid to settlers, its salutary moral influence, and in other helps to the civilization of the country, says in pointed language, (see sup. p. 89), "*Wherever the operations of the Company extend, they have opened the way to future emigration, provided the means necessary for the success of emigrants, and rendered its peaceful occupation an easy and cheap task.*" The Claimants consider the proof on this subject abundant to justify the pretension set up in the Memorial and expressed on the preceding pages, that they were in an important, if not in a chief degree, instrumental by their aid to immigrants, and by their other agencies and operations in the country, in rendering it fit for immediate settlement, thus making it of far greater value to the United States, and that it is but just that they should receive reasonable compensation for what they have so done.

I have now offered all I have to say on the subject of the grounds

of claim set out in the Memorial, and which should constitute the basis of the award. I cannot, however, finally dismiss this subject without exposing for consideration certain peculiar hardships to which the Company has been subjected, and suggesting that they ought not to be overlooked in assessing the amount to be recovered. I first allude to the fact, that for many years the United States, either directly by its officers, or indirectly by its citizens, has been in the possession and enjoyment of a large portion of the most valuable property of the Company, and since 1860 of the whole of it, with the exceptions of Colville and the small posts of Okanagan, Kootenais, and Flatheads. For this enjoyment, interest ought to be paid upon the value at which the property may be assessed, which, in fact, constitutes its price. Such is the rule common to all systems of law, and this interest dating, in so far as Walla Walla, Fort Hall, and Boisé are concerned, from 1855, and for Vancouver from the military reserve in 1849, for a portion, and from 1860 at least (if not further back), for the remainder, ought to be added up to the date of the award, and make part of the sum to be paid as an adequate money consideration for the transfer of such property.

The other matter to which I have above alluded as one of peculiar hardship, is the mode of resistance to the claim. As I have already stated on the first page of this argument, no formal answer was given to the Memorial. To that course the Counsel for the Claimants did not object, from a feeling that this was not a proceeding which ought to be regulated and restrained by the narrow technical rules which belong to proceedings in an action at law. He was quite willing that such scope should be taken as was consistent with reason and with the large and national character of the subject of controversy. But the result has been that advantage has been taken of the absence of any special defined issue, to dispute everything. Witnesses in great numbers have been brought forward to make statements on all kinds of topics, many of them having but a remote bearing upon the subject of the claim, and others none at all. No offer has been made of any amount whatever. Nothing has been admitted. The course has been a universal denial, a negation of all and everything, however palpably true or perfectly established.

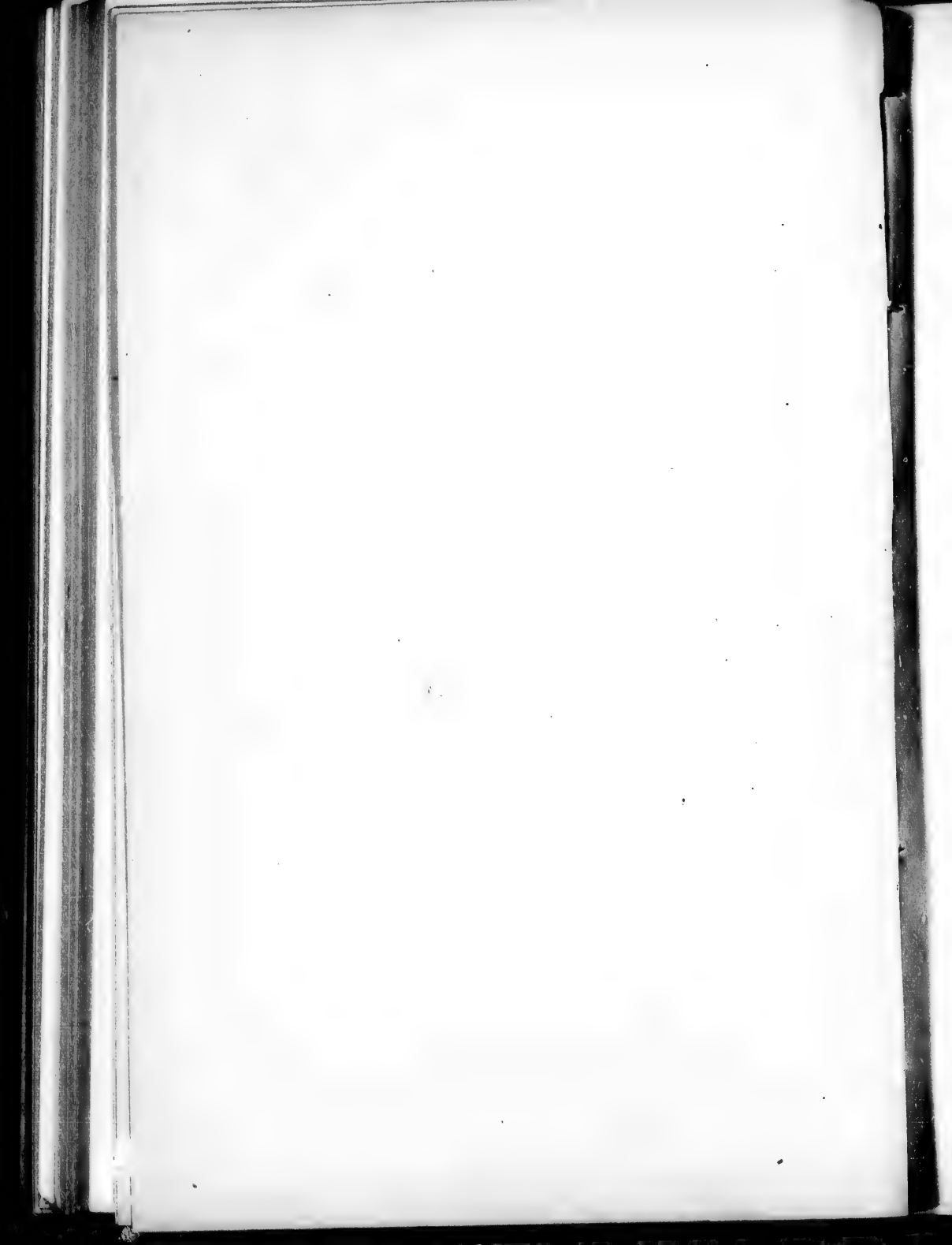
Of the testimony adduced by the United States, three-fourths at least, are useless, a mere incumbrance of the record. Most of the gentlemen of the army who have ever been on the western side of the Rocky Mountains have been examined, and a multitude of civilians has been added to them. These examinations have spread over more than fourteen months in time, and over nearly the whole of this continent, and even beyond it, in geographical extent. We have had them from all parts of Oregon, from this city, New York, Cincinnati, Detroit, North Carolina, the Tortugas and from England. The consequence of all this is an enormous accumulation of expenses and costs, certainly, not less than \$80,000 in amount. And it is submitted, that these costs, and all the costs to which the Claimants have been, or may be, put, ought to be paid by the losing party which has made no offer, although, it was absolutely certain that a large sum must, at all events, be paid. A schedule, shewing how great an amount has been expended, will be hereafter presented. I invoke with respect to these costs another rule which is common to all systems of law, and under its sanction, and that of common justice, urge upon the consideration of the Commissioners, that the amount should be added as making part of the sum which the claimants may be declared entitled to recover.

I have thus, with great detail, laid before the Honorable the Commissioners this claim in all its particulars. It has been my duty to do so under the course of defence which has been adopted, and which is a piece of gigantic detail upon all matters which, however remotely, can affect the case, and upon a good many others which have not the most distant connection with it. But while I have yielded to the necessity of the position into which the Claimants have been forced, and feel that they have succeeded even upon this retail principle, in shewing that a much larger amount is really due than has been claimed, I have never departed from my first opinion, that the award upon the claim ought not to be framed item by item like a judgment based upon an account for goods sold, but that it should rest upon a consideration of the rights in question as a whole. The magnitude of these rights; their peculiar nature and indivisible character; the place formerly held by the Hudson's Bay Company in the Oregon country; the position

of the parties ; the dignity of treaty stipulations ; the political and national considerations involved, and the constitution of this Commission, all suggest, that it is consistent with the higher justice and with the spirit of the treaty, that, instead of specifying the value of particulars, one entire sum should be named as including the value of all the rights of every description contemplated between the two great contracting parties ; and that this sum should be the adequate money consideration for the transfer of such rights. I believe that a just award might have been arrived at, without this enormous accumulation of evidence and other proceedings, if the claim had been met frankly and in good faith ; and even now after all this labor and expense have been suffered, it is still better that the award should assume this general form. It would, of course, be out of my place to do more than merely to express my own opinion upon this subject. It is one which belongs entirely to the tribunal, and must be dealt with according to its discretion. I leave it, therefore, in the form of a suggestion, without urging anything in the way of direct application or argument upon it. The advantages of it will readily occur to minds as practised as those which I have the honor to address.

The exposition of the case of the Claimants is here concluded. It has not unfrequently been difficult in the progress through it, to determine how much of detail would be useful, and when prolixity might without disadvantage be avoided. I may have erred more than once on the one side and on the other ; but the claim is now committed for judgment, with confidence that the discernment and experience of the tribunal will detect and remedy any feebleness or defect, which may become apparent in the mode of presenting it. The functions of the Commission are essentially judicial, but they are also something more. It has to ascertain and settle not upon narrow technical rules, but upon the broad grounds of truth and justice, the amount which ought to be paid under the treaty for bringing this long pending controversy to a termination ; and if the parties, Claimant or Respondent, have failed to place the Commissioners in a position to decide with a full knowledge upon all the questions involved, they will not adjudicate upon such imperfect knowledge, but will call upon the one party or the other, or upon both, to supply the instruction necessary for a thoroughly

intelligent decision of the whole case. Such is undoubtedly the scope of their powers and of their duties. Should it therefore appear to them that anything has been omitted either in the argument, or in the evidence upon which it is based, material to this complete understanding and perfect appreciation, the Claimants are ready to furnish to the utmost of their ability all such further information as may be required. They make this declaration as an earnest of willingness to submit their pretensions to the most exhaustive examination. But at the same time they firmly believe, that by the case, as it now stands, these pretensions are justified and established to their fullest extent; and that no less than the amount claimed ought to be awarded as the value of their rights, and the adequate money consideration for the relinquishment of them to the United States.



BRITISH AND AMERICAN JOINT COMMISSION.

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TO

ARGUMENT FOR THE CLAIMANTS

IN THE MATTER OF

THE HUDSON'S BAY COMPANY,

AGAINST

THE UNITED STATES.

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